

Memorandum 97-47

Trial Court Unification By County: Code of Civil Procedure Draft

Attached is a staff draft of a tentative recommendation on revision of the Code of Civil Procedure to implement SCA 4. Issues for discussion are shown in boxed staff notes at appropriate places in the draft. If other issues warrant discussion, please plan on raising them at the Commission's meeting.

The attached draft uses the term "Chapter 5.1 civil matters" for matters currently within the original jurisdiction of the municipal court. Another possibility is "Section 85 civil matters," because the definition of "Chapter 5.1 civil matters" would be in proposed Section 85 of Chapter 5.1 of the Code of Civil Procedure. The latter term might generate confusion, however, because a matter could be a "Section 85 civil matter" even if it was brought under another provision, such as Code of Civil Procedure Section 86, which is one of the statutes listed in Section 85.

The staff also considered using the term "Chapter 5.1 civil actions" instead of "Chapter 5.1 civil matters." But the Code of Civil Procedure differentiates between "actions" and "special proceedings" and at least one of the statutes listed in proposed Section 85 seems to be a special proceeding. *See* Code Civ. Proc. § 1710.20. While "matter" is not defined in the Code of Civil Procedure, it is used in a number of provisions and it is broad enough to encompass both an action and a special proceeding. *See* Code Civ. Proc. §§ 86, 116.531, 116.610, 116.710, 116.730, 116.930, 166, 170.6, 632, 904.1, 911. Another alternative would be "Chapter 5.1 civil judicial remedies." Although the term "judicial remedy" is clearly defined to include either an action or a special proceeding (*see* Code Civ. Proc. § 21), "Chapter 5.1 civil judicial remedies" would be more cumbersome than "Chapter 5.1 civil matters."

The Commission may also want to consider using the term "CCP Chapter 5.1 civil matters," which would alert litigants that the Chapter 5.1 in question is located in the Code of Civil Procedure. As the Commission works through the various codes, it should become easier to determine whether the modifier "CCP" would be helpful.

Finally, the draft uses the term “general civil matters” for matters currently within the original jurisdiction of the superior court. In an effort to avoid new terminology, the staff initially prepared the draft without introducing a term for such matters. That approach involved some awkward drafting, which was eliminated through introduction of the term “general civil matter.” If anyone has suggestions regarding that term, please present them at the Commission’s upcoming meeting.

Respectfully submitted,

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STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Staff Draft

TENTATIVE RECOMMENDATION

Trial Court Unification: Revision of Code of Civil Procedure

July 1997

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN _____.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

This tentative recommendation proposes revisions of the Code of Civil Procedure to implement trial court unification under SCA 4. This is one of a series of tentative recommendations on statutory revisions necessitated by trial court unification. It is anticipated that the Law Revision Commission will issue a final recommendation, and legislation will be introduced, in the 1998 legislative session to implement SCA 4. The legislation would be contingent on voter approval of SCA 4.

This tentative recommendation was prepared pursuant to Resolution Chapter 38 of the Statutes of 1996.

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1 TRIAL COURT UNIFICATION:
2 REVISION OF CODE OF CIVIL PROCEDURE

3 BACKGROUND

4 **Trial Court Unification Under SCA 4**

5 Senate Constitutional Amendment 4 (Lockyer) was enacted as Resolution
6 Chapter 36 of the Statutes of 1996.¹ It provides for unification of the municipal
7 and superior courts in a county on a vote of a majority of the municipal court
8 judges and a majority of the superior court judges in that county.²

9 The measure is currently scheduled to be on the ballot in a statewide election on
10 June 9, 1998.³ If it is approved by the voters, it will become operative the day after
11 the election.⁴ The measure includes a number of provisions that are self-
12 executing,⁵ and other provisions that apply only on unification of the municipal
13 and superior courts in a county.⁶

14 **Role and Methodology of Law Revision Commission**

15 Both the self-executing provisions and the other provisions of SCA 4 require
16 conforming or implementing legislation. The Legislature has directed the Law
17 Revision Commission to report recommendations “pertaining to statutory changes
18 that may be necessitated by court unification.”⁷ This assignment follows an earlier

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1. A copy of the measure is attached as Appendix 1.
 2. Proposed Cal. Const. art. VI, § 5(e).
 3. 1996 Cal. Stat. ch. 333, § 2(i). If a statewide election is called before the next regularly scheduled statewide election, there may be immediate transitional problems. Pending legislation — AB 1110 (Murray) — accommodates this possibility.
 4. Cal. Const. art. XVIII, § 4.
 5. The measure contains a number of constitutional revisions that will apply regardless of whether the courts in any county ever elect to unify. These include:
 - (1) Creation of an appellate division in the superior court. Cal. Const. art. VI, § 4.
 - (2) Changes in structure of Judicial Council. Cal. Const. art. VI, § 6.
 - (3) Protection of the appellate jurisdiction of the courts of appeal in causes of a type within that jurisdiction on June 30, 1995. Cal. Const. art. VI, § 11(a).
 - (4) Delegation of the appellate jurisdiction of the superior court to causes prescribed by statute. Cal. Const. art. VI, § 11(b).
 - (5) Change in the date of an election to fill a superior court vacancy (to the next general election after the second January following the vacancy). Cal. Const. art. VI, § 16(c).
 6. Provisions contingent on unification within a county include:
 - (1) Composition of Judicial Council. Cal. Const. art. VI, § 6.
 - (2) Composition of Commission on Judicial Performance. Cal. Const. art. VI, § 8.
 - (3) Election of judges in unified counties. Cal. Const. art. VI, § 16(b)(1).
 - (4) Transitional provisions for unification. Cal. Const. art. VI, § 23.
 7. 1996 Cal. Stat. Res. ch. 38.

1 legislative assignment in which the Commission made recommendations on the
2 constitutional revisions necessary to implement trial court unification.⁸

3 The Commission engaged the services of the Legislative Practice Institute and
4 its director, Professor Clark Kelso of McGeorge Law School, to prepare initial
5 drafts of suggested code revisions. The initial drafts are reviewed by the Judicial
6 Council, which established working groups for this purpose, and are revised
7 appropriately before being considered by the Law Revision Commission. The
8 Commission will issue a series of tentative recommendations, which will be
9 publicized and circulated for comment before the Commission adopts its final
10 recommendations for code revision.

11 It is the intention of the Commission to submit its recommendations to the
12 Governor and Legislature by the beginning of the 1998 legislative session, for
13 enactment at that session. To this end, the Commission will narrowly limit its
14 recommendations to generally preserve existing procedures for the causes they
15 now govern.

16 Unification does, however, offer the opportunity for further efficiencies and
17 economies in judicial administration. At the end of this report, the Commission
18 identifies a number of matters for future study and possible reform.

19 **Drafting Conventions**

20 Any legislation introduced is likely to include not only changes necessitated by
21 SCA 4, but also unrelated technical revisions requested by Legislative Counsel.⁹
22 To highlight the SCA 4 changes for those who have occasion to review them, the
23 Commission's tentative recommendations will not include technical revisions
24 unrelated to SCA 4.¹⁰

25 The drafts do, however, delete existing statutory references to justice courts.
26 Justice courts have been eliminated from California's judicial structure,¹¹ but the
27 statutes have not yet been revised to account for this.

28 **CODE OF CIVIL PROCEDURE**

29 **Differentiating Among Superior Court Civil Causes**

30 On unification of the trial courts in a county, all causes will be within the
31 original jurisdiction of the superior court. It will, however, be necessary to
32 differentiate among superior court causes to preserve economic litigation
33 procedures, local appeals, filing fees, and other procedural distinctions for matters
34 that traditionally have been within the municipal court's jurisdiction. The

8. See *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm'n Reports 1 (1994); *Trial Court Unification: Transitional Provisions for SCA 3*, 24 Cal. L. Revision Comm'n Reports 627 (1994).

9. For example, Legislative Counsel habitually expunges the word "such" from the text of all statutes.

10. Gender-neutral language is adopted throughout, however.

11. 1994 Cal. Stats. Res. ch. 113 (SCA 7) (Prop. 191, approved Nov. 8, 1994).

1 alternative, treating all causes in the same manner as traditional superior court
2 causes, would be impractical for a number of reasons, including the prospect of
3 swamping trial and appellate court resources.

4 The statutes could differentiate among civil causes simply by referring to causes
5 that would be within the jurisdiction of the municipal court if the courts in a
6 county had not unified. But this approach is predicated on the assumption that
7 municipal courts in some counties will exist indefinitely. The approach also makes
8 it necessary to refer to statutes applicable in another county to determine
9 jurisdiction issues in a unified court. In the long run, all courts may be unified, at
10 which time further statutory revision would be necessary.

11 A preferable approach is to identify causes that are traditionally within the
12 municipal court jurisdiction and deal with them directly. In the proposed
13 legislation, these causes are listed in new Section 85 of the Code of Civil
14 Procedure and are identified as “Chapter 5.1 civil matters.” In a county in which
15 the courts have not unified, the municipal court would have jurisdiction of Chapter
16 5.1 civil matters. In a county in which the courts have unified, the superior court
17 would have original jurisdiction of Chapter 5.1 civil matters, but such matters
18 would be governed by economic litigation procedures, local appeal, filing fees,
19 and the other procedural distinctions that characterize these causes in a municipal
20 court.

21 **Appellate Jurisdiction of Court of Appeal**

22 SCA 4 provides that the courts of appeal have appellate jurisdiction when
23 superior courts have original jurisdiction “in causes of a type within the appellate
24 jurisdiction of the courts of appeal on June 30, 1995” and in other causes
25 prescribed by statute.¹² The effect of this provision is to freeze the court of appeal
26 jurisdiction as it existed on June 30, 1995, regardless of changes that may have
27 occurred since then.

28 The provision presents a number of challenges, including ascertaining what it
29 means to be a cause “of a type” within the court of appeal jurisdiction, keeping the
30 legal community aware of the historical jurisdiction of the court of appeal, and
31 dealing with pending appeals on the operative date of SCA 4 in matters of a type
32 that were not within the appellate jurisdiction of the court of appeal on June 30,
33 1995.

34 The proposed legislation resolves these issues through a statutory grant of
35 appellate jurisdiction to the court of appeal in matters within the original
36 jurisdiction of the superior court, excluding Chapter 5.1 civil matters (causes
37 historically within the original jurisdiction of the municipal courts). Statutory
38 expansion of court of appeal jurisdiction is allowed under SCA 4¹³ and provides a
39 ready means of determining the extent of the appellate jurisdiction of the court of

12. Proposed Cal. Const. art. VI, § 11(a).

13. Proposed Cal. Const. art. VI, § 11(a) (“and in other causes prescribed by statute”).

1 appeal. The statutory grant of jurisdiction is also consistent with the intent of SCA
2 4: to preserve the appellate jurisdiction of the court of appeal in matters
3 historically within the original jurisdiction of the superior court.

4 **Appellate Division of Superior Court**

5 *Creation of appellate division.* SCA 4 creates an appellate division in each
6 superior court.¹⁴ The appellate division is similar to the existing appellate
7 department, but is intended to have greater autonomy so that it can exercise a true
8 review function in a unified superior court.¹⁵ SCA 4 creates appellate divisions in
9 all superior courts, regardless of whether the trial courts in the county have
10 unified.

11 *Appellate jurisdiction of appellate division.* Under existing law, the appellate
12 jurisdiction of the superior court is defined by causes “that arise in municipal
13 courts in their counties.”¹⁶ SCA 4 would delete this provision, simply leaving the
14 appellate jurisdiction of superior courts to statute.¹⁷ The proposed legislation
15 would make clear that the appellate jurisdiction of the appellate division covers
16 Chapter 5.1 civil matters — causes traditionally within the original jurisdiction of
17 municipal courts, regardless of whether the courts in a county have unified.

18 *Appointments to appellate division.* SCA 4 requires the Chief Justice to assign
19 judges to the appellate division for specified terms pursuant to rules, not
20 inconsistent with statute, adopted by the Judicial Council to promote the
21 independence of the appellate division.¹⁸ The provision

22 requires adoption of court rules intended to foster independence of judges serving
23 in the appellate division. Rules may set forth relevant factors to be used in making
24 appointments to the appellate division, such as length of service as a judge,
25 reputation within the unified court, and degree of separateness of the appellate
26 division workload from the judge’s regular assignments (e.g., a superior court
27 judge who routinely handles large numbers of misdemeanors might ordinarily not
28 serve in the appellate division). Review by a panel of judges might include judges
29 assigned from another county in appropriate circumstances, or even by a panel of
30 appellate division judges from different superior courts who sit in turn in each of
31 the superior courts in the “circuit.”¹⁹

32 To effectuate this intent, the proposed law does not attempt to specify terms or
33 conditions, but leaves the Judicial Council freedom to adopt appropriate rules and
34 leaves the Chief Justice broad discretion in making appointments.

14. Proposed Cal. Const. art. VI, § 4.

15. Assignments to the appellate division are made by the Chief Justice for specified terms and pursuant to rules (not inconsistent with statute) adopted by the Judicial Council to promote the independence of the appellate division.

16. Cal. Const. art. VI, § 11.

17. Proposed Cal. Const. art. VI, § 11(b).

18. Proposed Cal. Const. art. VI, § 4.

19. *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm’n Reports 1, 77 (1994).

1 **Small Claims**

2 *Organizational structure.* The small claims division of the municipal court is
3 colloquially referred to as the small claims “court.”²⁰ The colloquial usage is
4 common and convenient; the proposed law sanctions this usage, while making the
5 statutes technically correct by referring to the “division”. In a county in which the
6 municipal and superior courts have unified, the small claims court is a division of
7 the superior court rather than a division of the municipal court.

8 *Appeals.* The current appeal route for a small claim is a new trial in the superior
9 court, a court of higher jurisdiction.²¹ Upon unification of the municipal and
10 superior courts in a county, the superior court will include the small claims
11 division and will not be a court of higher jurisdiction. SCA 4 addresses this matter
12 by providing for a rehearing in the superior court by a judge other than the judge
13 who originally heard the matter, except as provided by statute to the contrary.²²
14 The proposed law preserves the scheme of SCA 4: A hearing before a new judicial
15 officer, with legal representation,²³ is a sufficient review opportunity for the
16 litigants without being a substantial burden on judicial resources.

17 **Transitional Issues in Pending Causes**

18 On the operative date of unification, there will be causes pending in the
19 municipal court, as well as new causes that are statutorily within the jurisdiction of
20 the municipal court. SCA 4 includes transitional provisions that address these
21 matters.²⁴ The proposed law makes the constitutional transitional provisions more
22 accessible to attorneys and others by repeating them in statutes.²⁵

23 **ISSUES IN JUDICIAL ADMINISTRATION**
24 **APPROPRIATE FOR FUTURE STUDY**

25 In the process of preparing proposed statutory revisions to implement trial court
26 unification, the Commission has noted the following issues in judicial
27 administration that may be appropriate for future study:

- 28 (1) Jurisdictional limits for economic litigation procedures.
29 (2) Jurisdictional limits for small claims cases,

20. The statutes also frequently refer to it as a “court” rather than as a division of the municipal court. Cf. Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of the Code of Civil Procedure (Small Claims Court).

21. Code Civ. Proc. §§ 116.710, 116.770.

22. Proposed Cal. Const. art. VI, § 23(c)(6).

23. Code Civ. Proc. § 116.770(c).

24. Proposed Cal. Const. art. VI, § 23(c)(4)-(5).

25. A copy of the statutory transitional provisions is attached as Appendix 2.

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APPENDIX 1: TEXT OF SCA 4

Resolved by the Senate, the Assembly concurring, That the Legislature of the State of California at its 1995-96 Regular Session commencing on the fifth day of December, 1994, two-thirds of the membership of each house concurring, hereby proposes to the people of the State of California that the Constitution of the State be amended as follows:

First — That Section 16 of Article I thereof is amended to read:

SEC. 16. Trial by jury is an inviolate right and shall be secured to all, but in a civil cause three-fourths of the jury may render a verdict. A jury may be waived in a criminal cause by the consent of both parties expressed in open court by the defendant and the defendant's counsel. In a civil cause a jury may be waived by the consent of the parties expressed as prescribed by statute.

In civil causes the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court. In civil causes ~~in municipal or justice court~~ other than causes within the appellate jurisdiction of the court of appeal the Legislature may provide that the jury shall consist of eight persons or a lesser number agreed on by the parties in open court.

In criminal actions in which a felony is charged, the jury shall consist of 12 persons. In criminal actions in which a misdemeanor is charged, the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court.

Second — That Section 1 of Article VI thereof is amended to read:

SEC. 1. The judicial power of this State is vested in the Supreme Court, courts of appeal, superior courts, and municipal courts. ~~All courts~~, all of which are courts of record.

Third — That Section 4 of Article VI thereof is amended to read:

SEC. 4. In each county there is a superior court of one or more judges. The Legislature shall prescribe the number of judges and provide for the officers and employees of each superior court. If the governing body of each affected county concurs, the Legislature may provide that one or more judges serve more than one superior court.

~~The county clerk is an ex-officio clerk of the superior court in the county.~~

In each superior court there is an appellate division. The Chief Justice shall assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence of the appellate division.

Fourth — That Section 5 of Article VI thereof is amended to read:

SEC. 5. (a) Each county shall be divided into municipal court districts as provided by statute, but a city may not be divided into more than one district. Each

1 municipal court shall have one or more judges. Each municipal court district shall
2 have no fewer than 40,000 residents; provided that each county shall have at least
3 one municipal court district. The number of residents shall be determined as
4 provided by statute.

5 (b) On the operative date of this subdivision, all existing justice courts shall
6 become municipal courts, and the number, qualifications, and compensation of
7 judges, officers, attaches, and employees shall continue until changed by the
8 Legislature. Each judge of a part-time municipal court is deemed to have agreed to
9 serve full time and shall be available for assignment by the Chief Justice for the
10 balance of time necessary to comprise a full-time workload.

11 (c) The Legislature shall provide for the organization and prescribe the
12 jurisdiction of municipal courts. It shall prescribe for each municipal court the
13 number, qualifications, and compensation of judges, officers, and employees.

14 (d) Notwithstanding subdivision (a), any city in San Diego County may be
15 divided into more than one municipal court district if the Legislature determines
16 that unusual geographic conditions warrant such division.

17 (e) Notwithstanding subdivision (a), the municipal and superior courts shall be
18 unified upon a majority vote of superior court judges and a majority vote of
19 municipal court judges within the county. In those counties, there shall be only a
20 superior court.

21 Fifth — That Section 6 of Article VI thereof is amended to read:

22 SEC. 6. The Judicial Council consists of the Chief Justice and one other judge of
23 the Supreme Court, 3 judges of courts of appeal, 5 judges of superior courts, and 5
24 judges of municipal courts, 2 nonvoting court administrators, and such other
25 nonvoting members as determined by the voting membership of the council, each
26 appointed by the Chief Justice for a 2-year 3-year term pursuant to procedures
27 established by the council; 4 members of the State Bar appointed by its governing
28 body for 2-year 3-year terms; and one member of each house of the Legislature
29 appointed as provided by the house. Vacancies in the memberships on the Judicial
30 Council otherwise designated for municipal court judges shall be filled by judges
31 of the superior court in the case of appointments made when fewer than 10
32 counties have municipal courts.

33 Council membership terminates if a member ceases to hold the position that
34 qualified the member for appointment. A vacancy shall be filled by the appointing
35 power for the remainder of the term.

36 The council may appoint an Administrative Director of the Courts, who serves at
37 its pleasure and performs functions delegated by the council or the Chief Justice,
38 other than adopting rules of court administration, practice and procedure.

39 To improve the administration of justice the council shall survey judicial
40 business and make recommendations to the courts, make recommendations
41 annually to the Governor and Legislature, adopt rules for court administration,

1 practice and procedure, ~~not inconsistent with statute~~, and perform other functions
2 prescribed by statute. The rules adopted shall not be inconsistent with statute.

3 The Chief Justice shall seek to expedite judicial business and to equalize the
4 work of judges. The Chief Justice may provide for the assignment of any judge to
5 another court but only with the judge's consent if the court is of lower jurisdiction.
6 A retired judge who consents may be assigned to any court.

7 Judges shall report to the ~~Judicial Council~~ council as the Chief Justice directs
8 concerning the condition of judicial business in their courts. They shall cooperate
9 with the council and hold court as assigned.

10 Sixth — That Section 8 of Article VI thereof is amended to read:

11 SEC. 8. (a) The Commission on Judicial Performance consists of one judge of a
12 court of appeal, one judge of a superior court, and one judge of a municipal court,
13 each appointed by the Supreme Court; 2 members of the State Bar of California
14 who have practiced law in this State for 10 years, each appointed by the governor;
15 and 6 citizens who are not judges, retired judges, or members of the State Bar of
16 California, 2 of whom shall be appointed by the Governor, 2 by the Senate
17 Committee on Rules, and 2 by the Speaker of the Assembly.

18 Except as provided in ~~subdivision (b)~~ subdivisions (b) and (c), all terms are for 4
19 years. No member shall serve more than 2 4-year terms, or for more than a total of
20 10 years if appointed to fill a vacancy. A vacancy in the membership on the
21 Commission on Judicial Performance otherwise designated for a municipal court
22 judge shall be filled by a judge of the superior court in the case of an appointment
23 made when fewer than 10 counties have municipal courts.

24 (b) Commission membership terminates if a member ceases to hold the position
25 that qualified the member for appointment. A vacancy shall be filled by the
26 appointing power for the remainder of the term. A member whose term has
27 expired may continue to serve until the vacancy has been filled by the appointing
28 power. Appointing powers may appoint members who are already serving on the
29 commission prior to March 1, 1995, to a single 2-year term, but may not appoint
30 them to an additional term thereafter.

31 (b) (c) To create staggered terms among the members of the Commission on
32 Judicial Performance, the following members shall be appointed, as follows:

33 (1) Two members appointed by the Supreme Court to a term commencing March
34 1, 1995, shall each serve a term of 2 years and may be reappointed to one full
35 term.

36 (2) One attorney appointed by the Governor to a term commencing March 1,
37 1995, shall serve a term of 2 years and may be reappointed to one full term.

38 (3) One citizen member appointed by the Governor to a term commencing
39 March 1, 1995, shall serve a term of 2 years and may be reappointed to one full
40 term.

1 (4) One member appointed by the Senate Committee on Rules to a term
2 commencing March 1, 1995, shall serve a term of 2 years and may be reappointed
3 to one full term.

4 (5) One member appointed by the Speaker of the Assembly to a term
5 commencing March 1, 1995, shall serve a term of 2 years and may be reappointed
6 to one full term.

7 (6) All other members shall be appointed to full 4-year terms commencing
8 March 1, 1995.

9 Seventh — That Section 10 of Article VI thereof is amended to read:

10 SEC. 10. The Supreme Court, courts of appeal, superior courts, and their judges
11 have original jurisdiction in habeas corpus proceedings. Those courts also have
12 original jurisdiction in proceedings for extraordinary relief in the nature of
13 mandamus, certiorari, and prohibition. The appellate division of the superior court
14 has original jurisdiction in proceedings for extraordinary relief in the nature of
15 mandamus, certiorari, and prohibition directed to the superior court in causes
16 subject to its appellate jurisdiction.

17 Superior courts have original jurisdiction in all other causes except those given
18 by statute to other trial courts.

19 The court may make such comment on the evidence and the testimony and
20 credibility of any witness as in its opinion is necessary for the proper
21 determination of the cause.

22 Eighth — That Section 11 of Article VI thereof is amended to read:

23 SEC. 11. (a) The Supreme Court has appellate jurisdiction when judgment of
24 death has been pronounced. With that exception courts of appeal have appellate
25 jurisdiction when superior courts have original jurisdiction in causes of a type
26 within the appellate jurisdiction of the courts of appeal on June 30, 1995, and in
27 other causes prescribed by statute. When appellate jurisdiction in civil causes is
28 determined by the amount in controversy, the Legislature may change the
29 appellate jurisdiction of the courts of appeal by changing the jurisdictional amount
30 in controversy.

31 ~~Superior courts have appellate jurisdiction in causes prescribed by statute that~~
32 ~~arise in municipal courts in their counties.~~

33 (b) Except as provided in subdivision (a), the appellate division of the superior
34 court has appellate jurisdiction in causes prescribed by statute.

35 (c) The Legislature may permit appellate courts exercising appellate jurisdiction
36 to take evidence and make findings of fact when jury trial is waived or not a matter
37 of right.

38 Ninth — That Section 16 of Article VI thereof is amended to read:

39 SEC. 16. (a) Judges of the Supreme Court shall be elected at large and judges of
40 courts of appeal shall be elected in their districts at general elections at the same

1 time and places as the Governor. Their terms are 12 years beginning the Monday
2 after January 1 following their election, except that a judge elected to an unexpired
3 term serves the remainder of the term. In creating a new court of appeal district or
4 division the Legislature shall provide that the first elective terms are 4, 8, and 12
5 years.

6 ~~(b) Judges of other~~ (1) In counties in which there is no municipal court, judges of
7 superior courts shall be elected in their counties at general elections except as
8 otherwise necessary to meet the requirements of federal law. In the latter case the
9 Legislature, by two-thirds vote of the membership of each house thereof, with the
10 advice of judges within the affected court, may provide for their election by the
11 system prescribed in subdivision (d), or by any other arrangement. The Legislature
12 may provide that an unopposed incumbent's name not appear on the ballot.

13 (2) In counties in which there is one or more municipal court districts, judges of
14 superior and municipal courts shall be elected in their counties or districts at
15 general elections. The Legislature may provide that an unopposed incumbent's
16 name not appear on the ballot.

17 (c) Terms of judges of superior courts are 6 years beginning the Monday after
18 January 1 following their election. A vacancy shall be filled by election to a full
19 term at the next general election after the second January 1 following the vacancy,
20 but the Governor shall appoint a person to fill the vacancy temporarily until the
21 elected judge's term begins.

22 (d) Within 30 days before August 16 preceding the expiration of the judge's
23 term, a judge of the Supreme Court or a court of appeal may file a declaration of
24 candidacy to succeed to the office presently held by the judge. If the declaration is
25 not filed, the Governor before September 16 shall nominate a candidate. At the
26 next general election, only the candidate so declared or nominated may appear on
27 the ballot, which shall present the question whether the candidate shall be elected.
28 The candidate shall be elected upon receiving a majority of the votes on the
29 question. A candidate not elected may not be appointed to that court but later may
30 be nominated and elected.

31 The Governor shall fill vacancies in those courts by appointment. An appointee
32 holds office until the Monday after January 1 following the first general election at
33 which the appointee had the right to become a candidate or until an elected judge
34 qualifies. A nomination or appointment by the Governor is effective when
35 confirmed by the Commission on Judicial Appointments.

36 Electors of a county, by majority of those voting and in a manner the Legislature
37 shall provide, may make this system of selection applicable to judges of superior
38 courts.

39 Tenth — That Section 23 is added to Article VI thereof, to read:

40 SEC. 23. (a) The purpose of the amendments to Sections 1, 4, 5, 6, 8, 10, 11, and
41 16, of this article, and the amendments to Section 16 of Article I, approved at the
42 November 5, 1996, general election is to permit the Legislature to provide for the

1 abolition of the municipal courts and unify their operations within the superior
2 courts. Notwithstanding Section 8 of Article IV, the implementation of, and
3 orderly transition under, the provisions of the measure adding this section may
4 include urgency statutes that create or abolish offices or change the salaries, terms,
5 or duties of offices, or grant franchises or special privileges, or create vested rights
6 or interests, where otherwise permitted under this Constitution.

7 (b) When the superior and municipal courts within a county are unified, the
8 judgeships in each municipal court in that county are abolished and the previously
9 selected municipal court judges shall become judges of the superior court in that
10 county. The term of office of a previously selected municipal court judge is not
11 affected by taking office as a judge of the superior court. The 10-year membership
12 or service requirement of Section 15 does not apply to a previously selected
13 municipal court judge. Pursuant to Section 6, the Judicial Council may prescribe
14 appropriate education and training for judges with regard to trial court unification.

15 (c) Except as provided by statute to the contrary, in any county in which the
16 superior and municipal courts become unified, the following shall occur
17 automatically in each preexisting superior and municipal court:

18 (1) Previously selected officers, employees, and other personnel who serve the
19 court become the officers and employees of the superior court.

20 (2) Preexisting court locations are retained as superior court locations.

21 (3) Preexisting court records become records of the superior court.

22 (4) Pending actions, trials, proceedings, and other business of the court become
23 pending in the superior court under the procedures previously applicable to the
24 matters in the court in which the matters were pending.

25 (5) Matters of a type previously within the appellate jurisdiction of the superior
26 court remain within the jurisdiction of the appellate division of the superior court.

27 (6) Matters of a type previously subject to rehearing by a superior court judge
28 remain subject to rehearing by a superior court judge, other than the judge who
29 originally heard the matter.

30 (7) Penal Code procedures that necessitate superior court review of, or action
31 based on, a ruling or order by a municipal court judge shall be performed by a
32 superior court judge other than the judge who originally made the ruling or order.

33 Eleventh — That if any provision of this measure or its application to any person
34 or circumstance is held invalid, the invalidity does not affect other provisions or
35 applications of this measure that can be given effect without the invalid provision
36 or application, and to this end the provisions of this measure are severable.

1 APPENDIX 2: SCA 4 STOP-GAP IMPLEMENTING LEGISLATION

2 An act to amend Section 911 of, and to add Sections 46 and 76 to, the Code of
3 Civil Procedure, and to add Chapter 5.1 (commencing with Section 70200) to Title
4 8 of the Government Code, relating to courts, and declaring the urgency thereof, to
5 take effect immediately.

6 *The people of the State of California do enact as follows:*

7 **Code Civ. Proc. § 46 (added). Appellate jurisdiction of courts of appeal**

8 SEC. 1. Section 46 is added to the Code of Civil Procedure, to read:

9 46. (a) Courts of appeal have appellate jurisdiction in the following causes:

10 (1) In a county in which the municipal and superior courts have not unified,
11 causes within the original jurisdiction of the superior court.

12 (2) In a county in which the municipal and superior courts have unified, causes
13 within the original jurisdiction of the superior court, excluding causes that would
14 be within the original jurisdiction of the municipal court absent unification.

15 (b) Nothing in this section limits the appellate jurisdiction of the courts of appeal
16 in causes of a type within their appellate jurisdiction on June 30, 1995, or in other
17 causes prescribed by statute.

18 **Comment.** Section 46 implements the constitutional authority in Constitution Article VI,
19 Section 11, for appellate jurisdiction of courts of appeal in “other causes provided by statute.” It
20 is designed to avoid the problem of restricting appellate jurisdiction of courts of appeal to matters
21 within their appellate jurisdiction on June 30, 1995.

22 The appellate jurisdiction of the courts of appeal is defined by the superior court jurisdiction as
23 it exists in nonunified counties. This rule applies regardless whether a particular cause coming
24 before a court of appeal arose in a unified or nonunified court.

25 This section allocates appellate review authority to the court of appeal. It is not intended to
26 create a right of appeal in a particular cause that does not otherwise exist. *Cf.* Powers v. City of
27 Richmond, 40 Cal. Rptr. 2d 839 (1995).

28 Nothing in subdivision (a) limits the transfer authority of courts of appeal pursuant to Section
29 911. See subdivision (b) (nothing limits appellate jurisdiction “in other causes prescribed by
30 statute”).

31 **Code Civ. Proc. § 76 (added). Appellate division of superior court**

32 SEC. 2. Section 76 is added to the Code of Civil Procedure, to read:

33 76. (a) A reference in any statute to the appellate department of the superior
34 court means the appellate division of the superior court.

35 (b) Notwithstanding subdivision (e) of Section 77, the appellate division of the
36 superior court has jurisdiction on appeal from the following courts, in all cases in
37 which an appeal may be taken to the superior court as is now or may hereafter be
38 provided by law, except appeals that require a retrial in the superior court:

39 (1) The municipal courts in the county.

40 (2) The superior court in a county in which the municipal and superior courts
41 have unified in a cause that would be within the original jurisdiction of the
42 municipal court absent unification.

1 **Comment.** Subdivision (a) of Section 76 converts the appellate department of the superior
2 court to the appellate division. The appellate division is created by Constitution Article VI,
3 Section 4. The existing structure of the appellate department is created in Code of Civil Procedure
4 Section 77.

5 Subdivision (b) implements the provision of Constitution Article VI, Section 11(b), that “the
6 appellate division of the superior court has appellate jurisdiction in causes prescribed by statute.”
7 It would replace Code of Civil Procedure Section 77(e) in part.

8 **Code Civ. Proc. § 911 (amended). Transfer of appeals from superior court to court of**
9 **appeal**

10 SEC. 3. Section 911 of the Code of Civil Procedure is amended to read:

11 911. A court of appeal may order any case on appeal within ~~the original~~
12 ~~jurisdiction of the municipal and justice courts~~ a superior court in its district
13 transferred to it for hearing and decision as provided by rules of the Judicial
14 Council when the superior court certifies, or the court of appeal determines, that
15 such transfer appears necessary to secure uniformity of decision or to settle
16 important questions of law.

17 No case in which there is a right on appeal to a trial anew in the superior court
18 shall be transferred pursuant to this section before a decision in such case becomes
19 final therein.

20 A court to which any case is transferred pursuant to this section shall have
21 similar power to review any matter and make orders and judgments as the
22 appellate division of the superior court would have in such case, except that if the
23 case was tried anew in the superior court, the reviewing court of appeal shall have
24 similar power to review any matter and make orders and judgments as it has in a
25 case ~~within the original jurisdiction of the superior court~~ appealed pursuant to
26 Section 904.1.

27 **Comment.** Section 911 is amended to reflect the elimination of the justice court, and the
28 authority of municipal and superior courts in each county to unify their operations in the superior
29 court. Cal. Const. art. VI, §§ 5(b), (e), 10. The section applies to appeals taken to the appellate
30 division of the superior court (see Section 76) and to appeals taken to the superior court where the
31 appeal is in the form of a trial de novo (see, e.g., Section 116.770 (small claims appeals)).

32 **Gov’t Code §§ 70200-70214 (added). The Unified Superior Courts**

33 SEC. 4. Chapter 5.1 (commencing with Section 70200) is added to Title 8 of the
34 Government Code, to read:

35 CHAPTER 5.1. THE UNIFIED SUPERIOR COURTS

36 Article 1. Unification Voting Procedure

37 **§ 70200. Unification voting procedure provided in this article**

38 70200. (a) The municipal and superior courts in a county shall be unified on a
39 majority vote of superior court judges and a majority vote of municipal court
40 judges in the county, pursuant to the procedure provided in this article.

1 (b) The vote shall be conducted by the Judicial Council or, if authorized by the
2 Judicial Council, the county’s registrar of voters.

3 (c) The Judicial Council may adopt rules not inconsistent with this article for the
4 conduct of the vote, including but not limited to rules governing the frequency of
5 vote calls, manner of voting, duration of the voting period, and changes within the
6 voting period.

7 **Comment.** Section 70200 reiterates authority provided in Constitution Article VI, Section 5(e),
8 for unification of the municipal and superior courts in a county. The implementation of the
9 unification procedure is vested in the Legislature by Constitution Article VI, Section 23 (purpose
10 of constitutional amendment is to permit Legislature to provide for unification).

11 For the operative date of a vote for unification, see Section 70203.

12 **§ 70201. Conduct of vote**

13 70201. (a) A vote of the judges in a county for unification shall be called by the
14 Judicial Council on application of the presiding judge of the superior court in the
15 county or on application of a majority of the judges of the municipal court or a
16 majority of the judges of the superior court in the county.

17 (b) The vote shall be taken 30 days after it is called.

18 (c) A judge is eligible to vote if the judge is serving in the court pursuant to an
19 election or appointment under Section 16 of Article VI of the California
20 Constitution at the time the vote is taken.

21 (d) The ballot shall be in substantially the following form:

22 “Shall the municipal and superior courts in the County of [name county] be
23 unified on [specify date]? [Yes] [No]”

24 **Comment.** Section 70201 does not specify a manner of voting (e.g., secret ballot). This matter
25 is left to Judicial Council rules. See Section 70200(c).

26 **§ 70202. Certification of results**

27 70202. (a) The Judicial Council or registrar of voters shall certify the results of a
28 vote to unify the municipal courts and the superior courts in a county.

29 (b) Unification of the municipal and superior courts in a county requires an
30 affirmative vote of a majority of all superior court judges in the county eligible to
31 vote and a majority of all municipal court judges in the county eligible to vote.

32 (c) After certification, a vote to unify the municipal and superior courts in a
33 county may not be rescinded.

34 **§ 70203. Operative date of unification**

35 70203. Unification of the municipal and superior courts in a county shall occur
36 on the earlier of the date specified in the unification vote or 180 days following
37 certification of the vote for unification.

Article 2. Transitional Provisions for Unification

§ 70210. Transitional rules of court

70210. The Judicial Council shall adopt rules of court not inconsistent with statute for:

(a) The orderly conversion of proceedings pending in municipal courts to proceedings in superior courts, and for proceedings commenced in superior courts on and after the date the municipal and superior courts in a county are unified.

(b) Selection of persons to coordinate implementation activities for the unification of municipal courts with superior courts in a county, including:

(1) Selection of a presiding judge for the unified superior court.

(2) Selection of a court executive officer for the unified superior court.

(3) Appointment of court committees or working groups to assist the presiding judge and court executive officer in implementing unification.

(c) The authority of the presiding judge, in conjunction with the court executive officer and appropriate individuals or working groups of the unified superior court, to act on behalf of the court to implement unification.

(d) Preparation and submission of a written personnel plan to the judges of a unified superior court for adoption.

(e) Preparation of any necessary local court rules that shall, on the date the municipal and superior courts in a county are unified, be the rules of the unified superior court.

(f) Other necessary activities to facilitate the transition to a unified superior court.

Comment. Section 70210 mandates that the Judicial Council adopt rules of court to coordinate and guide the trial courts in effectively implementing trial court unification.

Subdivision (a) provides generally that the rules will ensure the orderly conversion of proceedings in the unified superior court as of the date the municipal and superior courts in a county are unified.

Subdivision (b) provides for the selection of the presiding judge, court executive officer, and appropriate committees or working groups to assist the presiding judge. The method of selection, and the specific duties and authorities for each will be set forth in the rules, as is currently the case in existing Rules 204, 205, 207, 532.5, 532.6, and 573 of the California Rules of Court. This preserves the balance of power that currently exists between the legislature and the judiciary.

Subdivision (c) is intended to encourage the presiding judge to work closely with the court executive officer and court committees or other working groups to implement unification decisions.

Subdivision (d) provides that the courts will develop and adopt a personnel plan. The section parallels Rule 205(11). Decisions on the appropriate personnel system and related labor relations matters can only be made after comprehensive study and with input from all affected entities. See also Section 69503 (AB 1110).

Subdivision (e) provides for local rule adoption. As under current practice, the Judicial Council will determine which procedural issues shall be addressed by local rule and which by statewide rule.

Examples of issues that may be addressed by rule of court under subdivision (f) include the development of informational programs for the public and the Bar about unification, and

1 education and training programs for judicial officers and court staff to facilitate the effective
2 transition to a unified court.

3 **§ 70211. Conversion of judgeships**

4 70211. When the municipal and superior courts in a county are unified:

5 (a) The judgeships in each municipal court in that county are abolished and the
6 previously selected municipal court judges become judges of the superior court in
7 that county. Until revised by statute, the total number of judgeships in the unified
8 superior court shall equal the previously authorized number of judgeships in the
9 municipal court and superior court combined.

10 (b) The term of office of a previously selected municipal court judge is not
11 affected by taking office as a judge of the superior court.

12 (c) The 10-year membership or service requirement of Section 15 of Article VI
13 of the California Constitution does not apply to a previously selected municipal
14 court judge.

15 **Comment.** Section 70211 restates the first three sentences of Constitution Article VI, Section
16 23(b), with the addition in subdivision (a) of a provision maintaining the total number of
17 judgeships in the county. The Legislature prescribes the number of judges. Cal. Const. art. VI, §§
18 4, 5.

19 The references in this section to a “previously selected” judge includes selection by election or
20 by appointment to fill a vacancy. *Cf. Trial Court Unification: Constitutional Revision (SCA 3)*, 24
21 Cal. L. Revision Comm’n Reports 1, 82 (1994) (Article VI, § 23(b) Comment).

22 **§ 70212. Transitional provisions**

23 70212. In a county in which the municipal and superior courts become unified,
24 the following shall occur automatically in each preexisting municipal and superior
25 court:

26 (a) Previously selected officers, employees, and other personnel who serve the
27 court become the officers and employees of the superior court.

28 (b) Preexisting court locations are retained as superior court locations.

29 (c) Preexisting court records become records of the superior court.

30 (d) Pending actions, trials, proceedings, and other business of the court become
31 pending in the superior court under the procedures previously applicable to the
32 matters in the court in which the matters were pending.

33 (e) Matters of a type previously subject to rehearing by a superior court judge
34 remain subject to rehearing by a superior court judge, other than the judge who
35 originally heard the matter.

36 (f) Penal Code procedures that necessitate superior court review of, or action
37 based on, a ruling or order by a municipal court judge shall be performed by a
38 superior court judge other than the judge who originally made the ruling or order.

39 (g) Subpoenas, summons of jurors, and other process issued by the court shall be
40 enforceable by the superior court.

41 **Comment.** Subdivisions (a)-(f) of Section 70212 restate Constitution Article VI, Section 23(c).
42 Although embodied in the Constitution, these provisions are subject to variation by statute. See

1 Cal. Const. art. VI, § 23(c) (introductory clause). See also Code Civ. Proc. § 76 (appellate
2 division of superior court); Gov't Code § 69503 (AB 1110).

3 Subdivision (g) makes clear that process issued by a municipal court remains enforceable by
4 the superior court after unification.

5 **§ 70213. Provisions relating to municipal court**

6 70213. In a county in which the municipal and superior courts become unified,
7 the following shall occur automatically in each preexisting municipal and superior
8 court:

9 (a) A reference in a statute to the municipal court or the judge of a municipal
10 court shall be deemed to be a reference to the superior court or a judge of the
11 superior court.

12 (b) Proceedings within the jurisdiction of the municipal courts shall be
13 conducted in the superior court under the procedures that would be applicable to
14 the proceedings in a municipal court.

15 (c) Filing fees and other fees and costs for proceedings within the jurisdiction of
16 municipal courts shall remain the same as they would be if the proceedings were in
17 a municipal court.

18 (d) Bond and undertaking requirements in proceedings within the jurisdiction of
19 municipal courts shall remain the same as they would be if the proceedings were in
20 a municipal court.

21 (e) Sessions, including days, hours, and locations of proceedings within the
22 jurisdiction of municipal courts shall remain the same as they would be if the
23 proceedings were in a municipal court.

24 (f) The relief available in proceedings within the jurisdiction of municipal courts
25 shall remain the same as it would be if the proceedings were in a municipal court.

26 (g) Until revised by the Judicial Council, forms for proceedings within the
27 jurisdiction of municipal courts may be used as if the proceedings were in a
28 municipal court.

29 (h) The Judicial Council may adopt rules resolving any other problem that may
30 arise in the conversion of statutory references from the municipal court to the
31 superior court.

32 **§ 70214. Preclearance under Voting Rights Act**

33 70214. The Attorney General shall, to the extent required by the preclearance
34 provisions of the federal Voting Rights Act, 42 U.S.C. § 1973 *et seq.*, seek to
35 obtain preclearance of Section 16(b)(1) of Article VI of the California Constitution
36 as it applies in a county in which the courts are unified pursuant to Section 5(b) of
37 Article VI of the California Constitution.

38 **Comment.** Section 70214 vests preclearance duties in the Attorney General. See 42 U.S.C. §
39 1973c (preclearance submission by state's chief legal officer); Cal. Const. art. V, § 13 (Attorney
40 General state's chief law officer).

1 **Operative date**

2 SEC. 5. This bill shall become operative only upon the adoption by the voters of
3 Senate Constitutional Amendment 4 of the 1995-96 Regular Session of the
4 Legislature, in which event it shall become operative at the same time as Senate
5 Constitutional Amendment 4.

6 **Urgency clause**

7 SEC. 6. This act is an urgency statute necessary for the immediate preservation
8 of the public peace, health, or safety within the meaning of Article IV of the
9 Constitution and shall go into immediate effect. The facts constituting the
10 necessity are:

11 Senate Constitutional Amendment 4 of the 1995-96 Regular Session of the
12 Legislature, if approved by the voters, would change the appellate jurisdiction of
13 the courts and would enable the municipal and superior courts in a county to unify.
14 It is necessary that implementing measures be taken immediately so that an orderly
15 transition of the court system will occur.

PROPOSED LEGISLATION

Code Civ. Proc. § 77 (amended). Appellate division

SEC. _____. Section 77 of the Code of Civil Procedure is amended to read:

77. (a) In every county and city and county, there is an appellate department ~~division~~ of the superior court consisting of three judges or, when the ~~Chairperson~~ of the Judicial Council Chief Justice finds it necessary, four judges.

~~(1) In a county with three or fewer judges of the superior court, the appellate department shall consist of those judges, one of whom shall be designated as presiding judge by the Chairperson of the Judicial Council, and an additional judge or judges as designated by the Chairperson of the Judicial Council. Each additional judge shall be a judge of the superior court of another county or a judge retired from the superior court or court of higher jurisdiction in this state.~~

~~(2) In a county with four or more judges of the superior court, the appellate department shall consist of judges of that court designated by the Chairperson of the Judicial Council, who shall also designate one of the judges as the presiding judge of the department. judges. The Chief Justice shall assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence and quality of each appellate division. Each judge assigned to the appellate division of a superior court shall be a judge of that court, a judge of the superior court of another county, or a judge retired from the superior court or a court of higher jurisdiction in this state. The Chief Justice shall designate one of the judges of each appellate division as the presiding judge of the division.~~

~~(b) In an appellate department with four judges, In each appellate division, no more than three judges shall participate in a hearing or decision. The presiding judge of the department division shall designate the three judges who shall participate.~~

~~(c) In addition to their other duties, the judges designated as members of the appellate department division of the superior court shall serve for the period specified in the order of designation. Whenever a judge is designated to serve in the appellate department division of the superior court of a county other than the county in which such judge was elected or appointed as a superior court judge, or if he the judge is retired, in a county other than the county in which he resides, he the judge resides, the judge shall receive from the county to which he is designated his the judge is designated expenses for travel, board, and lodging. If the judge is out of his the judge's county overnight or longer, by reason of the designation, such judge shall be paid a per diem allowance in lieu of expenses for board and lodging in the same amounts as are payable for such purposes to justices of the Supreme Court under the rules of the State Board of Control. In addition, a retired judge shall receive from the state and the county to which he the judge is designated, for the time so served, amounts equal to that which he the judge would~~

1 have received from each if he the judge had been assigned to the superior court of
2 the county.

3 (d) The concurrence of two judges of the appellate ~~department~~ division of the
4 superior court shall be necessary to render the decision in every case in, and to
5 transact any other business except such that may be done at chambers by the
6 presiding judge of, ~~such department~~ the division. The presiding judge shall
7 convene ~~such department at such times as may be~~ the division as necessary. He
8 The presiding judge shall also supervise its business and transact such thereof as
9 may be done at chambers.

10 (e) ~~Every appellate department under this section shall have jurisdiction on~~
11 ~~appeal from the municipal and justice courts within the county or city and county~~
12 ~~in all cases in which an appeal may be taken to the superior court as is now or may~~
13 ~~hereafter be provided by law, except such appeals as require a retrial in the~~
14 ~~superior court. The powers of each appellate department shall be the same as are~~
15 ~~now or may hereafter be provided by law or rule of the Judicial Council relating to~~
16 ~~appeals to the superior courts. The appellate division of the superior court has~~
17 ~~jurisdiction on appeal from the following courts, in all cases in which an appeal~~
18 ~~may be taken to the superior court or the appellate division of the superior court as~~
19 ~~is now or may hereafter be provided by law, except appeals that require a retrial in~~
20 ~~the superior court:~~

21 (1) The municipal courts within the county.

22 (2) The superior court in a county in which there is no municipal court.

23 (f) The powers of the appellate department division shall be the same as are now
24 or may hereafter be provided by law or rule of the Judicial Council relating to
25 appeals to the appellate division of the superior courts.

26 (f) (g) The Judicial Council may promulgate rules, not inconsistent with law,
27 governing to promote the independence of, and govern the practice and procedure
28 and the disposition of the business of ~~such appellate departments, or of each class~~
29 ~~thereof,~~ the appellate division.

30 (h) A reference in any other statute to the appellate department of the superior
31 court means the appellate division of the superior court.

32 **Comment.** Section 77 is amended to reflect the elimination of the justice court, and the
33 authority of the municipal and superior courts in each county to unify their operations in the
34 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10.

35 Subdivision (a) requires adoption of court rules intended to promote the independence and
36 quality of judges serving in the appellate division. See Cal. Const. art. VI, § 4 (expressly
37 recognizing the goal of promoting the independence of the appellate division). Rules may provide
38 relevant factors to be used in making appointments to the appellate division, such as length of
39 service as a judge, reputation within the unified court, and degree of separateness of the appellate
40 division workload from the judge's regular assignments (e.g., a superior court judge who
41 routinely handles large numbers of misdemeanors might ordinarily not serve in the appellate
42 division). Review by a panel of judges might include judges assigned from another county in
43 appropriate circumstances, or even by a panel of appellate division judges from different superior
44 courts who sit in turn in each of the superior courts in the "circuit."

1 Subdivision (b) continues the rule that the appellate division sits in panels of three. A judge
2 may not participate in appellate review of any proceeding that the judge tried or heard. Section
3 170.1(7)(b).

4 Subdivision (e) is amended to delete the reference to the justice courts, and specify the
5 jurisdiction of the appellate division in a unified superior court. For guidance on which civil
6 matters are subject to the appellate jurisdiction of the appellate division, see Section 904.5 and
7 Constitution Article VI, Section 11.

8 Section 77 is amended throughout to replace references to the appellate department with
9 references to the appellate division, and to replace references to the Chairperson of the Judicial
10 Council with references to the Chief Justice. This is consistent with the terminology used in
11 Constitution Article VI, Sections 4, 10, and 11.

12 **Code Civ. Proc. § 85 (repealed). Money judgments**

13 SEC. _____. Section 85 of the Code of Civil Procedure is repealed.

14 ~~85. If the judgment or order in a municipal court or justice court in any action or~~
15 ~~proceeding in which the defendant has appeared is for the payment of money by~~
16 ~~the defendant, the defendant shall pay the same immediately or at any time and~~
17 ~~upon such terms and conditions, including installment payments, which the court~~
18 ~~may prescribe. The court may amend the terms and conditions for payment of the~~
19 ~~judgment or order at any time to provide for installment payments for good cause~~
20 ~~upon motion by a party and notice to all affected parties, regardless of the nature~~
21 ~~of the underlying debt and regardless whether the moving party appeared before~~
22 ~~entry of such judgment or order. In any determination regarding the imposition of~~
23 ~~terms and conditions upon the payment of the judgment, the court shall consider~~
24 ~~any factors which would be relevant to the determination of a claim for exemption~~
25 ~~pursuant to Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9~~
26 ~~of Part 2 or the examination of a debtor pursuant to Article 2 (commencing with~~
27 ~~Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part 2.~~

28 **Comment.** Former Section 85 is continued in Section 582.5 without substantive change, except
29 that Section 582.5 refers to Chapter 5.1 civil matters instead of matters brought in municipal or
30 justice court.

31 ☞ **Staff Note.** Section 85 authorizes the municipal and justice courts to set terms and conditions
32 for payment of money judgments entered in those courts. With revisions to account for trial court
33 unification by county option, it fits better in Chapter 1 (Judgment in General) (commencing with
34 Section 577) of Title 8 of Part 2 of the Code of Civil Procedure, than in Chapter 5 (Municipal
35 Courts) (commencing with Section 81) of Title 1 of Part 1. For further discussion of Section 85,
36 see proposed Section 582.5 below.

37 **Code Civ. Proc. §§ 85-85.1 (added). Chapter 5.1 Civil Matters**

38 SEC. _____. Chapter 5.1 (commencing with Section 85) is added to Title 1 of
39 Part 1 of the Code of Civil Procedure, to read:

1 (31) Any other civil matter that by statute is within the original jurisdiction of
2 the municipal court or that is classified by statute as a Chapter 5.1 civil matter.

3 (b) A civil matter other than a Chapter 5.1 civil matter is a “general civil matter.”

4 (c) “Amount in controversy” means the amount of the demand, or the recovery
5 sought, or the value of the property, or the amount of the lien, which is in
6 controversy in the action, exclusive of attorney fees, interest, and costs.

7 **Comment.** Section 85 is added to reflect the elimination of the justice court, and the authority
8 of the municipal and superior courts in each county to unify their operations in the superior court.
9 Cal. Const. art. VI, §§ 1, 5(b), (e), 10.

10 Subdivisions (a) and (b) facilitate differentiation among civil matters for purposes such as
11 determining original jurisdiction in a county in which there is a municipal court (see Section
12 85.1), applying economic litigation procedures (see Section 91), and defining appellate
13 jurisdiction (see Section 904.5). Formerly, each county had one or more municipal courts and a
14 superior court. Causes like those now classified as Chapter 5.1 civil matters were within the
15 original jurisdiction of the municipal court and subject to procedures now applicable to Chapter
16 5.1 civil matters.

17 Where such a cause was properly joined with a cause within the original jurisdiction of the
18 superior court, the entire matter would be tried in the superior court. *See, e.g.,* *Armstrong v.*
19 *Transcontinental Land & Water Co.*, 134 Cal. App. 2d Supp. 889, 285 P.2d 1031 (1955) (joinder
20 of equitable cross-complaint compelled transfer of entire action to superior court). Section 85
21 continues that policy by requiring that a Chapter 5.1 civil matter be brought exclusively pursuant
22 to one or more of the provisions listed in subdivision (a). If another type of cause is joined, the
23 matter is a general civil matter and the procedures for a Chapter 5.1 civil matter do not apply.

24 Similarly, the amount in controversy limitation of subdivision (a) continues the effect of former
25 law, under which the jurisdictional limit of the municipal court was \$25,000. *See, e.g.,* 2 B.
26 Witkin, *California Procedure Courts* § 249, at 323-25 (4th ed. 1996). Now, a matter is a Chapter
27 5.1 civil matter and subject to the procedures for a Chapter 5.1 civil matter only if the amount in
28 controversy is \$25,000 or less.

29 Subdivision (c), defining “amount in controversy,” continues the second sentence of former
30 Section 85 without change. For discussion of aggregating amounts in controversy in matters
31 involving multiple causes, see R. Weil & I. Brown, Jr., *California Practice Guide: Civil Procedure*
32 *Before Trial, Jurisdiction and Venue* §§ 3:97-3:111, at 3-22 to 3-24 (1996); 2 B. Witkin,
33 *California Procedure Jurisdiction* §§ 38-44, at 582-86 (4th ed. 1996).

34 ☞ **Staff Note.**

35 (1) The reference to Penal Code Section 851.8 concerns petitions for destruction of arrest
36 records. Whether such a petition should be considered a civil matter, subject to the appeal path for
37 a civil matter (see Section 904.5 (appellate jurisdiction)), or a criminal matter, subject to the
38 appeal path for a criminal matter is discussed in Memorandum 97-39 (Penal Code Draft).

39 (2) The listing in this section will require review and possible revisions as the Commission
40 works through the other codes. *See, e.g.,* Memorandum 97-40 as to the Food & Agric. Code
41 jurisdictional limitations referred to in (a)(11) *et seq.*

42 **Code Civ. Proc. § 85.1. Original jurisdiction**

43 85.1. In a county in which there is a municipal court, the municipal court has
44 original jurisdiction of Chapter 5.1 civil matters, and the superior court does not
45 have original jurisdiction of those matters.

46 **Comment.** Section 85.1 is added to reflect the elimination of the justice court, and the authority
47 of the municipal and superior courts in each county to unify their operations in the superior court.
48 Cal. Const. art. VI, §§ 1, 5(b), (e), 10. The original jurisdiction of the superior court is broad in a
49 county in which there is no municipal court. Cal. Const. art. VI, § 10. Under Section 85.1, the

1 original jurisdiction of the superior court is more limited in a county in which there is a municipal
2 court.

3 **Code Civ. Proc. § 86 (amended) Miscellaneous Chapter 5.1 civil matters**

4 SEC. _____. Section 86 of the Code of Civil Procedure is amended to read:

5 86. (a) ~~Each municipal and justice court has original jurisdiction of civil cases~~
6 ~~and proceedings as follows~~ Except as otherwise provided by statute, the following
7 civil cases and proceedings are Chapter 5.1 civil matters:

8 (1) ~~In all cases~~ Cases at law in which the demand, exclusive of interest, or the
9 value of the property in controversy amounts to twenty-five thousand dollars
10 (\$25,000) or less, ~~except. This paragraph does not apply to cases which involve the~~
11 ~~legality of any tax, impost, assessment, toll, or municipal fine, except the courts~~
12 ~~have jurisdiction in actions to enforce payment of delinquent unsecured personal~~
13 ~~property taxes if the legality of the tax is not contested by the defendant.~~

14 (2) ~~In actions~~ Actions for dissolution of partnership where the total assets of the
15 partnership do not exceed twenty-five thousand dollars (\$25,000); ~~in actions of~~
16 ~~interpleader where the amount of money or the value of the property involved does~~
17 ~~not exceed twenty-five thousand dollars (\$25,000).~~

18 (3) ~~In actions~~ Actions to cancel or rescind a contract when the relief is sought in
19 connection with an action to recover money not exceeding twenty-five thousand
20 dollars (\$25,000) or property of a value not exceeding twenty-five thousand
21 dollars (\$25,000), paid or delivered under, or in consideration of, the contract; ~~in~~
22 ~~actions to revise a contract where the relief is sought in an action upon the contract~~
23 ~~if the court otherwise has jurisdiction of the action is a Chapter 5.1 civil matter.~~

24 (4) ~~In all proceedings~~ Proceedings in forcible entry or forcible or unlawful
25 detainer where the whole amount of damages claimed is twenty-five thousand
26 dollars (\$25,000) or less.

27 (5) ~~In all actions~~ Actions to enforce and foreclose liens on personal property
28 where the amount of the liens is twenty-five thousand dollars (\$25,000) or less.

29 (6) ~~In all actions~~ Actions to enforce and foreclose liens of mechanics,
30 materialmen, artisans, laborers, and of all other persons to whom liens are given
31 under the provisions of Chapter 2 (commencing with Section 3109) of Title 15 of
32 Part 4 of Division 3 of the Civil Code, or to enforce and foreclose an assessment
33 lien on a common interest development as defined in Section 1351 of the Civil
34 Code, where the amount of the liens is twenty-five thousand dollars (\$25,000) or
35 less. However, where an action to enforce the lien is ~~pending in a municipal or~~
36 ~~justice court, and affects property which is also affected by a similar action~~
37 ~~pending in a superior court pending matter that is a general civil matter, or where~~
38 ~~the total amount of the liens sought to be foreclosed against the same property by~~
39 ~~action or actions in a municipal or justice court aggregates an amount in excess of~~
40 ~~twenty-five thousand dollars (\$25,000), the action is a general civil matter, and if~~
41 ~~the action is pending in a municipal court, the municipal or justice court in which~~
42 ~~any such action, or actions, is, or are, pending, upon motion of any interested~~

1 party, the municipal court shall order the action or actions pending therein
2 transferred to the proper superior court. Upon the making of the order, the same
3 proceedings shall be taken as are provided by Section 399 with respect to the
4 change of place of trial.

5 (7) ~~In actions~~ Actions for declaratory relief when brought pursuant to either of
6 the following:

7 (A) By way of cross-complaint as to a right of indemnity with respect to the
8 relief demanded in the complaint or a cross-complaint in an action or proceeding
9 ~~otherwise within the jurisdiction of the municipal or justice court that is a Chapter~~
10 5.1 civil matter.

11 (B) To conduct a trial after a nonbinding fee arbitration between an attorney and
12 client, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of
13 Division 3 of the Business and Professions Code, where the amount in controversy
14 is twenty-five thousand dollars (\$25,000) or less.

15 (8) ~~To~~ Actions to issue temporary restraining orders and preliminary injunctions,
16 to take accounts, and to appoint receivers where necessary to preserve the property
17 or rights of any party to ~~an action of which the court has jurisdiction a Chapter 5.1~~
18 civil matter; to appoint a receiver and to make any order or perform any act,
19 pursuant to Title 9 (commencing with Section 680.010) of Part 2 (enforcement of
20 judgments) in a Chapter 5.1 civil matter; to determine title to personal property
21 seized in ~~an action pending in such court a Chapter 5.1 civil matter.~~

22 (9) ~~In all actions~~ Actions under Article 3 (commencing with Section 708.210) of
23 Chapter 6 of Division 2 of Title 9 of Part 2 for the recovery of an interest in
24 personal property or to enforce the liability of the debtor of a judgment debtor
25 where the interest claimed adversely is of a value not exceeding twenty- five
26 thousand dollars (\$25,000) or the debt denied does not exceed twenty-five
27 thousand dollars (\$25,000).

28 (10) ~~In all arbitration-related~~ Arbitration-related petitions filed pursuant to either
29 of the following:

30 (A) Pursuant to Article 2 (commencing with Section 1292) of Chapter 5 of Title
31 9 of Part 3, except for uninsured motorist arbitration proceedings in accordance
32 with Section 11580.2 of the Insurance Code, if the petition is filed before the
33 arbitration award becomes final and the matter to be resolved by arbitration is
34 ~~within the jurisdiction of the municipal or justice court a Chapter 5.1 civil matter~~
35 under paragraphs (1) to (9), inclusive, or the petition if is filed after the arbitration
36 award becomes final and the amount of the award and all other rulings,
37 pronouncements, and decisions made in the award are within the jurisdiction of the
38 municipal or justice court under paragraphs (1) to (9), inclusive.

39 (B) To confirm, correct, or vacate a fee arbitration award between an attorney
40 and client that is binding or has become binding, pursuant to Article 13
41 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and
42 Professions Code, where the arbitration award is twenty-five thousand dollars
43 (\$25,000) or less.

1 ~~(b) Each municipal and justice court has jurisdiction of cases in equity as follows~~
2 ~~The following civil cases in equity are Chapter 5.1 civil matters:~~

3 ~~(1) In all cases Cases to try title to personal property when the amount involved~~
4 ~~is not more than twenty-five thousand dollars (\$25,000).~~

5 ~~(2) In all cases Cases when equity is pleaded as a defensive matter in any case~~
6 ~~otherwise properly pending in a municipal or justice court that is otherwise a~~
7 ~~Chapter 5.1 civil matter.~~

8 ~~(3) To Cases to vacate a judgment or order of such municipal or justice court~~
9 ~~obtained in a Chapter 5.1 civil matter through extrinsic fraud, mistake,~~
10 ~~inadvertence, or excusable neglect.~~

11 ~~(c) In any action that is otherwise within its jurisdiction, the court may impose~~
12 ~~liability whether the theory upon which liability is sought to be imposed involves~~
13 ~~legal or equitable principles.~~

14 ~~(d) Changes in the jurisdictional ceilings made by amendments to this section at~~
15 ~~the 1977-78 Regular Session or the 1985-86 Regular Session of the Legislature~~
16 ~~shall not constitute a basis for the transfer to another court of any case pending at~~
17 ~~the time such changes become operative.~~

18 **Comment.** Section 86 is amended to reflect the elimination of the justice court, and the
19 authority of the municipal and superior courts in each county to unify their operations in the
20 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10.

21 The cases and proceedings listed in subdivisions (a) and (b) are Chapter 5.1 civil matters unless
22 the amount in controversy exceeds \$25,000. See Section 85. Formerly, each county had one or
23 more municipal courts and a superior court, and the cases and proceedings listed in Section 86
24 were within the original jurisdiction of the municipal court, unless the amount in controversy
25 exceeded \$25,000. A Chapter 5.1 civil matter is equivalent to a matter within the original
26 jurisdiction of the municipal court under former law, so subdivisions (a) and (b) as amended
27 continue the effect of former law. See Section 85 (Chapter 5.1 civil matters and general civil
28 matters) & Comment.

29 Former subdivision (c) is continued without substantive change in Section 580 (relief
30 awardable in civil causes).

31 Former subdivision (d) is deleted as obsolete.

32 Section 86 is also amended to make technical changes.

33 **Code Civ. Proc. § 86.1 (amended). Long-Term Care, Health, Safety, and Security Act**

34 SEC. _____. Section 86.1 of the Code of Civil Procedure is amended to read:

35 86.1. ~~In addition to Section 86, each municipal and justice court has original~~
36 ~~jurisdiction of civil cases and proceedings in actions Except as otherwise provided~~
37 ~~by statute, an action brought pursuant to the Long-Term Care, Health, Safety, and~~
38 ~~Security Act of 1973 (Chapter 2.4 (commencing with Section 1417) of Division 2~~
39 ~~of the Health and Safety Code) is a Chapter 5.1 civil matter if civil penalties are~~
40 ~~not sought or amount to twenty-five thousand dollars (\$25,000) or less. These In a~~
41 ~~county in which there is a municipal court, these actions may be transferred to the~~
42 ~~superior court for consolidation with any other citation enforcement action~~
43 ~~pending in that court, on the motion of either party.~~

1 **Comment.** Section 86.1 is amended to reflect the elimination of the justice court, and the
2 authority of the municipal and superior courts in each county to unify their operations in the
3 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10.

4 An action pursuant to the Long-Term Care, Health, Safety, and Security Act of 1973 is a
5 Chapter 5.1 civil matter unless the amount in controversy exceeds \$25,000. See Section 85
6 (Chapter 5.1 civil matters and general civil matters). Formerly, each county had one or more
7 municipal courts and a superior court, and an action pursuant to the Long-Term Care, Health,
8 Safety, and Security Act of 1973 was within the original jurisdiction of the municipal court,
9 unless the amount in controversy exceeded \$25,000. A Chapter 5.1 civil matter is equivalent to a
10 matter within the original jurisdiction of the municipal court under former law, so Section 86.1 as
11 amended continues the effect of former law. See Section 85 & Comment.

12 **Code Civ. Proc. § 87 (repealed). Corporation as party**

13 SEC. _____. Section 87 of the Code of Civil Procedure is repealed.

14 ~~87. Where a corporation is a party in the municipal or justice court it may appear~~
15 ~~through a director, an officer, or an employee, whether or not such person is an~~
16 ~~attorney at law.~~

17 **Comment.** Section 87 is repealed as an unconstitutional intrusion on the power of a court to set
18 minimum standards for who may appear in court on behalf of a corporation. *Merco Construction*
19 *Engineers, Inc. v. Municipal Court*, 21 Cal. 3d 724, 581 P.2d 636, 147 Cal. Rptr. 631 (1978)
20 (When “the matter at issue involves minimum standards for engaging in the practice of law, it is
21 this court and not the Legislature which is final policy maker.”). See also *Say & Say, Inc. v.*
22 *Ebershoff*, 20 Cal. App. 3d 1759, 25 Cal. Rptr. 2d 703, 709 (1993) (“A corporation can never
23 appear in this or the superior court in civil or criminal litigation except in limited circumstances in
24 some small claims litigation in propria persona.”); *Albion River Watershed Protection Ass’n v.*
25 *Department of Forestry & Fire Protection*, 20 Cal. App. 3d 34, 24 Cal. Rptr. 2d 341, 343 (1993)
26 (“It is settled that an unincorporated association must be represented by a person licensed in this
27 state to practice law.”); *Clean Air Transport Systems v. San Mateo County Transit Dist.*, 198 Cal.
28 App. 3d 576, 578-79, 243 Cal. Rptr. 799 (1988) (“A lay person who purports to represent a
29 corporation is engaged in the unlawful practice of law.”).

30 ☞ **Staff Note.** The *Merco* case cited in the proposed Comment affirms a decision by the
31 Honorable Arthur K. Marshall.

32 **Article 2 heading (commencing with Section 90) (amended)**

33 SEC. _____. The heading of Article 2 (commencing with Section 90) of Chapter
34 5.1 (former Chapter 5) of Title 1 of Part 1 of the Code of Civil Procedure is
35 amended, to read:

36 Article 2. Economic Litigation for ~~Municipal and~~
37 Justice Courts Chapter 5.1 Civil Matters

38 **Comment.** The heading “Article 2. Economic Litigation for Municipal and Justice Courts” is
39 amended to reflect the elimination of the justice court, and the authority of the municipal and
40 superior courts in each county to unify their operations in the superior court. Cal. Const. art. VI,
41 §§ 1, 5(b), (e), 10.

42 New Chapter 5.1 (“Chapter 5.1 Civil Matters”) (commencing with Section 85) of Title 1 of Part
43 1 is now divided into two articles: “Article 1. Jurisdiction of Chapter 5.1 Civil Matters”
44 (commencing with Section 85) and “Article 2. Economic Litigation.”

1 **Code Civ. Proc. § 91 (amended). Application of economic litigation procedures**

2 SEC. _____. Section 91 of the Code of Civil Procedure is amended to read:

3 91. (a) Except as otherwise provided in this section, the provisions of this article
4 apply to every ~~municipal and justice court civil action~~ Chapter 5.1 civil matter,
5 including cases submitted to arbitration or on the arbitration hearing list, ~~pending~~
6 ~~in the municipal and justice courts, on or after July 1, 1983, in which the amount~~
7 ~~in controversy is twenty-five thousand dollars (\$25,000) or less. "Amount in~~
8 ~~controversy" means the amount of the demand, or the recovery sought, or the~~
9 ~~value of the property, or the amount of the lien, which is in controversy in the~~
10 ~~action, exclusive of attorney fees, interest, and costs. These provisions also apply~~
11 ~~to any action transferred to a municipal or justice court by reason of lack of~~
12 ~~jurisdiction in the court in which it was filed.~~

13 (b) The provisions of this article do not apply to any action under Chapter ~~5A~~ 5.5
14 (commencing with Section ~~116~~ 116.110) or any proceeding under Chapter 4
15 (commencing with Section 1159) of Title 3 of Part 3.

16 (c) Any action may, upon noticed motion, be withdrawn from the provisions of
17 this article, upon a showing that it is impractical to prosecute or defend the action
18 within the limitations of these provisions.

19 ~~(d) Special demurrers, motions to strike, and requests for discovery, pending or~~
20 ~~determined prior to July 1, 1983, shall be subject to the law in effect on June 30,~~
21 ~~1983.~~

22 **Comment.** Subdivision (a) of Section 91 is amended to reflect the elimination of the justice
23 court, and the authority of the municipal and superior courts in each county to unify their
24 operations in the superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10. Formerly, each county had
25 one or more municipal courts and a superior court, and economic litigation procedures applied to
26 cases tried in the municipal court. Now, the matters formerly triable in municipal court are
27 classified as Chapter 5.1 civil matters. See Section 85 (Chapter 5.1 civil matters and general civil
28 matters) & Comment. By making economic litigation procedures applicable to Chapter 5.1 civil
29 matters, Section 91 continues the effect of former law. The former second sentence of subdivision
30 (a), defining "amount in controversy," is continued without substantive change in Section 85.

31 Subdivision (b) is amended to delete the reference to former Chapter 5A (commencing with
32 Section 116), which has been repealed. Instead, subdivision (b) now refers to Chapter 5.5
33 (commencing with Section 116.110), which contains the current small claims provisions.

34 Subdivision (d) is deleted as obsolete.

35 **Code Civ. Proc. § 116.120 (amended). Legislative findings and declaration**

36 SEC. _____. Section 116.120 of the Code of Civil Procedure is amended to read:

37 116.120. The Legislature hereby finds and declares as follows:

38 (a) Individual minor civil disputes are of special importance to the parties and of
39 significant social and economic consequence collectively.

40 (b) In order to resolve minor civil disputes expeditiously, inexpensively, and
41 fairly, it is essential to provide a judicial forum accessible to all parties directly
42 involved in resolving these disputes.

43 (c) The small claims divisions of ~~municipal and justice courts~~ have been
44 established to provide a forum to resolve minor civil disputes, and for that reason

1 constitute a fundamental element in the administration of justice and the protection
2 of the rights and property of individuals.

3 (d) ~~The small claims divisions of justice and municipal courts, the provisions of~~
4 ~~this chapter, and the rules of the Judicial Council regarding small claims actions~~
5 ~~shall operate to ensure that the convenience of parties and witnesses who are~~
6 ~~individuals shall prevail, to the extent possible, over the convenience of any other~~
7 ~~parties or witnesses.~~

8 **Comment.** Section 116.120 is amended to reflect the elimination of the justice court, and the
9 authority of the municipal and superior courts in each county to unify their operations in the
10 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10.

11 **Code Civ. Proc. § 116.210 (amended). Small claims division**

12 SEC. _____. Section 116.210 of the Code of Civil Procedure is amended to read:

13 116.210. In each justice court and each municipal court and each superior court
14 in a county in which there is no municipal court, there shall be a small claims
15 division. The small claims division may be known as the small claims court.

16 **Comment.** Section 116.210 is amended to reflect the elimination of the justice court, and the
17 authority of the municipal and superior courts in each county to unify their operations in the
18 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10.

19 Section 116.210 is also amended to expressly authorize continued colloquial use of the name
20 “small claims court,” even though the small claims division is not a separate court.

21 **Code Civ. Proc. § 116.231 (amended). Limitation on number of actions filed each year**

22 SEC. _____. Section 116.231 of the Code of Civil Procedure is amended to read:

23 116.231. (a) Except as provided in subdivision (d), no person may file more than
24 two small claims actions in which the amount demanded exceeds two thousand
25 five hundred dollars (\$2,500), anywhere in the state in any calendar year.

26 (b) Except as provided in subdivision (d), if the amount demanded in any small
27 claims action exceeds two thousand five hundred dollars (\$2,500), the party
28 making the demand shall file a declaration under penalty of perjury attesting to the
29 fact that not more than two small claims actions in which the amount of the
30 demand exceeded two thousand five hundred dollars (\$2,500) have been filed by
31 that party in this state within the calendar year.

32 (c) The Legislature finds and declares that the pilot project conducted under the
33 authority of Chapter 1196 of the Statutes of 1991 demonstrated the efficacy of the
34 removal of the limitation on the number of actions public entities may file in the
35 small claims ~~courts~~ divisions on claims exceeding two thousand five hundred
36 dollars (\$2,500).

37 (d) The limitation on the number of filings exceeding two thousand five hundred
38 dollars (\$2,500) does not apply to filings where the claim does not exceed five
39 thousand dollars (\$5,000) which are filed by a city, county, city and county, school
40 district, county office of education, community college district, local district, or
41 any other local public entity. If any small claims action is filed by a city, county,
42 city and county, school district, county office of education, community college

1 district, local district, or any other local public entity pursuant to this section, and
2 the defendant informs the court either in advance of the hearing by written notice
3 or at the time of the hearing, that he or she is represented in the action by legal
4 counsel, the action shall be transferred to the municipal court or to the superior
5 court in a county in which there is no municipal court. A city, county, city and
6 county, school district, county office of education, community college district,
7 local district, or any other local public entity may not file a claim within the small
8 claims division if the amount of the demand exceeds five thousand dollars
9 (\$5,000).

10 (e) As used in this section, a transfer “to the municipal court” or “to the superior
11 court” means a transfer to the appropriate division of the transferee court.

12 **Comment.** Section 116.231 is amended to reflect the elimination of the justice court, and the
13 authority of the municipal and superior courts in each county to unify their operations in the
14 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10.

15 Section 116.250 is also amended to correct the reference to the small claims court, which is
16 colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

17 Subdivision (e) is added to clarify that Section 116.231 covers transfer from the small claims
18 division of a court to another division of the same court, as well as transfer from the small claims
19 division to another court.

20 **Code Civ. Proc. § 116.250 (amended). Court sessions**

21 SEC. _____. Section 116.250 of the Code of Civil Procedure is amended to read:
22 116.250. (a) Sessions of the small claims ~~court~~ division may be scheduled at any
23 time and on any day, including Saturdays, but excluding other judicial holidays.
24 They may also be scheduled at any public building within the judicial district, if
25 the small claims division is in a municipal court, or at any public building within
26 the county, if the small claims division is in a superior court, including places
27 outside the courthouse.

28 (b) Each small claims division of a municipal court with four or more judicial
29 officers, and each small claims division of a superior court with [eight] or more
30 judicial officers, shall conduct at least one night session or Saturday session each
31 month. The term “session” includes, but is not limited to, a proceeding conducted
32 by a member of the State Bar acting as a mediator or referee.

33 **Comment.** Section 116.250 is amended to reflect the elimination of the justice court, and the
34 authority of the municipal and superior courts in each county to unify their operations in the
35 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10.

36 Section 116.250 is also amended to correct the reference to the small claims court, which is
37 colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

☞ **Staff Note.**

(1) Amending the second sentence of subdivision (a) would be unnecessary if the Commission includes a general provision stating that for counties with a unified superior court “judicial district” means “county.” See Memorandum 97-52 (Judicial Districts).

(2) The amendment of subdivision (b) refers to a “small claims division of a superior court with [eight] or more judicial officers.” Is a unified superior court with eight or more judicial officers equivalent to a “municipal court with four or more judicial officers”? Would another number be more appropriate? Input from the Judicial Council would be very helpful on this point.

Code Civ. Proc. § 116.390 (amended). Transfer of claims

SEC. _____. Section 116.390 of the Code of Civil Procedure is amended to read:

116.390. (a) If a defendant has a claim against a plaintiff that exceeds the jurisdictional limits stated in Sections 116.220 and 116.231, and the claim relates to the contract, transaction, matter, or event which is the subject of the plaintiff’s claim, the defendant may commence an action against the plaintiff in a court of competent jurisdiction and request the small claims ~~court~~ division to transfer the small claims action to that court.

(b) The defendant may make the request by filing with the small claims ~~court~~ division in which the plaintiff commenced the action, at or before the time set for the hearing of that action, a declaration stating the facts concerning the defendant’s action against the plaintiff with a true copy of the complaint so filed by the defendant against the plaintiff and the sum of one dollar (\$1) for a transmittal fee. The defendant shall cause a copy of the declaration and complaint to be personally delivered to the plaintiff at or before the time set for the hearing of the small claims action.

(c) In ruling on a motion to transfer, the small claims ~~court~~ division may do any of the following: (1) render judgment on the small claims case prior to the transfer; (2) not render judgment and transfer the small claims case; (3) refuse to transfer the small claims case on the grounds that the ends of justice would not be served. If the small claims action is transferred prior to judgment, both actions shall be tried together in the transferee court.

(d) When the small claims ~~court~~ division orders the action transferred, it shall transmit all files and papers to the transferee court.

(e) The plaintiff in the small claims action shall not be required to pay to the clerk of the transferee court any transmittal, appearance, or filing fee unless the plaintiff appears in the transferee court, in which event the plaintiff shall be required to pay the filing fee and any other fee required of a defendant in the transferee court. However, if the transferee court rules against the plaintiff in the action filed in that court, the court may award to the defendant in that action the costs incurred as a consequence of the transfer, including attorney’s fees and filing fees.

1 (f) As used in this section, a “transfer” to a court means a transfer to the
2 appropriate division of the transferee court.

3 **Comment.** Section 116.390 is amended to correct references to the small claims court, which
4 are colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

5 Subdivision (f) is added to clarify that Section 116.390 covers transfer from the small claims
6 division of a court to another division of the same court, as well as transfer from the small claims
7 division to another court.

8 **Code Civ. Proc. § 116.760 (amended). Filing fee**

9 SEC. _____. Section 116.760 of the Code of Civil Procedure is amended to read:

10 116.760. (a) The appealing party shall pay the same superior court filing fee that
11 is required for an appeal of a ~~civil action from a justice or municipal court~~ Chapter
12 5.1 civil matter.

13 (b) A party who does not appeal shall not be charged any fee for filing any
14 document in the ~~superior court~~ appeal.

15 **Comment.** Section 116.760 is amended to reflect the elimination of the justice court, and the
16 authority of the municipal and superior courts in each county to unify their operations in the
17 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10.

18 Under subdivision (a), the fee for appealing from a small claims judgment is the same as the fee
19 for an appeal to the appellate division of the superior court, which is specified in Section 26824 of
20 the Government Code.

21 Subdivision (b) is amended to reflect relocation of the small claims division from the municipal
22 court to the superior court in a county in which the municipal and superior courts unify their
23 operations. Because the small claims division is in the same court that hears small claims appeals,
24 subdivision (b) extends only to documents in the appeal, not to all documents filed in superior
25 court.

26 **Code Civ. Proc. § 116.770 (amended). Hearing de novo**

27 SEC. _____. Section 116.770 of the Code of Civil Procedure is amended to read:

28 116.770. (a) The appeal to the superior court shall consist of a new hearing
29 before a judicial officer other than the judicial officer who heard the action in the
30 small claims division.

31 (b) The hearing on an appeal to the superior court shall be conducted informally.
32 The pretrial discovery procedures described in subdivision (a) of Section 2019 are
33 not permitted, no party has a right to a trial by jury, and no tentative decision or
34 statement of decision is required.

35 (c) Article 5 (commencing with Section 116.510) on hearings in the small claims
36 court division applies in hearings on appeal in the superior court, except that
37 attorneys may participate.

38 (d) The scope of the hearing shall include the claims of all parties who were
39 parties to the small claims action at the time the notice of appeal was filed. The
40 hearing shall include the claim of a defendant which was heard in the small claims
41 court division.

42 (e) The clerk of the superior court shall schedule the hearing for the earliest
43 available time and shall mail written notice of the hearing to the parties at least 14
44 days prior to the time set for the hearing.

1 (f) The Judicial Council may prescribe by rule the practice and procedure on
2 appeal and the time and manner in which the record on appeal shall be prepared
3 and filed.

4 **Comment.** Section 116.770 is amended to reflect the elimination of the justice court, and the
5 authority of the municipal and superior courts in each county to unify their operations in the
6 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10.

7 Section 116.770 is also amended to correct references to the small claims court, which are
8 colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

9 **Code Civ. Proc. § 116.940 (amended). Advisory services**

10 SEC. _____. Section 116.940 of the Code of Civil Procedure is amended to read:

11 116.940. (a) Except as otherwise provided in this section or in rules adopted by
12 the Judicial Council, the characteristics of the small claims advisory service
13 required by Section 116.260 shall be determined by each county in accordance
14 with local needs and conditions.

15 (b) Each advisory service shall provide the following services:

16 (1) Individual personal advisory services, in person or by telephone, and by any
17 other means reasonably calculated to provide timely and appropriate assistance.

18 (2) Recorded telephone messages may be used to supplement the individual
19 personal advisory services, but shall not be the sole means of providing advice
20 available in the county.

21 (3) Adjacent counties may provide advisory services jointly.

22 (c) In any county in which the number of small claims actions filed annually is
23 1,000 or less as averaged over the immediately preceding two fiscal years, the
24 county may elect to exempt itself from the requirements set forth in subdivision
25 (b). This exemption shall be formally noticed through the adoption of a resolution
26 by the board of supervisors. If a county so exempts itself, the county shall
27 nevertheless provide the following minimum advisory services in accordance with
28 rules adopted by the Judicial Council:

29 (1) Recorded telephone messages providing general information relating to small
30 claims actions filed in the county shall be provided during regular business hours.

31 (2) Small claims information booklets shall be provided in ~~each municipal and~~
32 ~~justice court clerk's office, the court clerk's office of each municipal court, the~~
33 court clerk's office of each superior court in a county in which there is no
34 municipal court, the county administrator's office, other appropriate county
35 offices, and in any other location that is convenient to prospective small claims
36 litigants in the county.

37 (d) The advisory service shall operate in conjunction and cooperation with the
38 small claims division, and shall be administered so as to avoid the existence or
39 appearance of a conflict of interest between the individuals providing the advisory
40 services and any party to a particular small claims action or any judicial officer
41 deciding small claims actions.

42 (e) Advisors may be volunteers, and shall be members of the State Bar, law
43 students, paralegals, or persons experienced in resolving minor disputes, and shall

1 be familiar with small claims court division rules and procedures. Advisors shall
2 not appear in court as an advocate for any party.

3 (f) Advisors and other court employees and volunteers have the immunity
4 conferred by Section 818.9 of the Government Code with respect to advice
5 provided under this chapter.

6 **Comment.** Section 116.940 is amended to reflect the elimination of the justice court, and the
7 authority of the municipal and superior courts in each county to unify their operations in the
8 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10.

9 Section 116.940 is also amended to correct the reference to the small claims court, which is
10 colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

11 **Code Civ. Proc. § 116.950 (amended). Advisory committee; operation of section**

12 SEC. _____. Section 116.950 of the Code of Civil Procedure is amended to read:

13 116.950. (a) This section shall become operative only if the Department of
14 Consumer Affairs determines that sufficient private or public funds are available
15 in addition to the funds available in the department's current budget to cover the
16 costs of implementing this section.

17 (b) There shall be established an advisory committee, constituted as set forth in
18 this section, to study small claims practice and procedure, with particular attention
19 given to the improvement of procedures for the enforcement of judgments.

20 (c) The members of the advisory committee shall serve without compensation,
21 but shall be reimbursed for expenses actually and necessarily incurred by them in
22 the performance of their duties. The advisory committee shall report its findings
23 and recommendations to the Judicial Council and the Legislature.

24 (d) The advisory committee shall be composed as follows:

25 (1) The Attorney General or a representative.

26 (2) Two consumer representatives from consumer groups or agencies, appointed
27 by the Secretary of the State and Consumer Services Agency.

28 (3) One representative appointed by the Speaker of the Assembly and one
29 representative appointed by the President pro Tempore of the Senate.

30 (4) Two representatives, appointed by the Board of Governors of the State Bar.

31 (5) Two representatives of the business community, appointed by the Secretary
32 of the Trade and Commerce Agency.

33 (6) Six judges of the municipal court ~~or justice court~~, or of the superior court in a
34 county in which there is no municipal court, who have had extensive experience as
35 judges of small claims court divisions, appointed by the Judicial Council.

36 (7) One representative appointed by the Governor.

37 (8) Two clerks of the court, appointed by the Judicial Council.

38 (e) Staff assistance to the advisory committee shall be provided by the
39 Department of Consumer Affairs, with the assistance of the Judicial Council, as
40 needed.

41 **Comment.** Section 116.950 is amended to reflect the elimination of the justice court, and the
42 authority of the municipal and superior courts in each county to unify their operations in the
43 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10.

1 Section 116.950 is also amended to correct the reference to the small claims court, which is
2 colloquially acceptable but technically incorrect. See Section 116.210 & Comment.
3

☞ **Staff Note.** An alternative approach would be to delete the phrase “of the municipal court or justice court” in Section 116.950(c)(6), so that any judge with extensive experience as a small claims judge (including a retired judge, an appellate court justice or a judge of a non-unified superior court) could serve on the advisory committee. This would amount to a policy change not necessitated by SCA 4. The Commission has decided against making such policy changes in the course of this study. (See 5/1/97-5/2/97 Minutes at p. 11.) It may be appropriate, however, to include the issue on the Commission’s list of potential study topics.

4 **Code Civ. Proc. § 199.2 (amended). Placer County jurors**

5 SEC. _____. Section 199.2 of the Code of Civil Procedure is amended to read:

6 199.2 (a) In Placer County, prospective jurors residing in the Tahoe Division of
7 the Placer County Municipal Court, ~~except as otherwise provided in this section,~~
8 shall only be included in trial court venires for sessions of the superior court held
9 within that division. ~~However, each~~ If there is no municipal court in Placer
10 County, prospective jurors residing in what was formerly the Tahoe Division of
11 the Placer County Municipal Court, shall only be included in trial court venires for
12 sessions of the superior court held within that area.

13 (b) ~~Notwithstanding subdivision (a) each~~ prospective juror residing in ~~the county~~
14 Placer County shall be given the opportunity to elect to serve on juries with
15 respect to trials held anywhere in the county in accordance with the rules of the
16 superior court, which shall afford to each eligible resident of the county an
17 opportunity for selection as a trial jury venireman. Additionally, nothing in this
18 section shall preclude the superior or municipal court, in its discretion, from
19 ordering a countywide venire in the interest of justice.

20 **Comment.** Section 199.2 is amended to reflect the elimination of the justice court, and the
21 authority of the municipal and superior courts in each county to unify their operations in the
22 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10.
23

☞ **Staff Note.** As drafted, Section 199.2 would refer to “what was formerly the Tahoe Division of the Placer County Municipal Court.” Alternatively, the Commission could include a general rule that unifying municipal and superior court operations in the superior court does not eliminate the geographic divisions of the municipal court. See Memorandum 97-52 (Judicial Districts).

24 **Code Civ. Proc. § 199.3 (amended). Nevada County jurors**

25 SEC. _____. Section 199.3 of the Code of Civil Procedure is amended to read:

26 199.3. (a) In Nevada County, prospective jurors residing in the Truckee Division
27 of the Nevada County Municipal Court, ~~except as otherwise provided in this~~
28 ~~section,~~ shall only be included in trial court venires of divisions of the superior
29 court located within the Truckee Division of the Nevada County Municipal Court
30 during the months of November, December, January, and February. ~~However,~~
31 ~~each~~ If there is no municipal court in Nevada County, during the months of
32 November, December, January, and February, prospective jurors residing in what

1 was formerly the Truckee Division of the Nevada County Municipal Court, shall
2 only be included in trial court venires for sessions of the superior court held within
3 that area.

4 (b) Notwithstanding subdivision (a), each prospective juror residing in the
5 Truckee Division of the Nevada County Municipal Court Nevada County shall be
6 given the opportunity to elect to serve on juries with respect to trials at other
7 locations during those months in accordance with the rules of the superior court,
8 which shall afford to each eligible resident of the county an opportunity for
9 selection as a trial jury venireman. Additionally, nothing in this section shall
10 preclude the superior court, in its discretion, from ordering a countywide venire in
11 the interest of justice during any time of the year.

12 **Comment.** Section 199.3 is amended to reflect the elimination of the justice court, and the
13 authority of the municipal and superior courts in each county to unify their operations in the
14 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10.
15

 **Staff Note.** As drafted, Section 199.3 would refer to “what was formerly the Truckee Division of the Nevada County Municipal Court.” Alternatively, the Commission could include a general rule that unifying municipal and superior court operations in the superior court does not eliminate the geographic divisions of the municipal court. See Memorandum 97-52 (Judicial Districts).

16 **Code Civ. Proc. § 200 (amended). Jurors not in Alameda County**

17 SEC. _____. Section 200 of the Code of Civil Procedure is amended to read:

18 200. Except in Alameda County, when authorized by local superior court rules, a
19 municipal ~~or justice~~ court district pursuant to duly adopted court rule may use the
20 same juror pool as that summoned for use in the superior court. Persons so
21 selected for jury service in those municipal ~~or justice~~ courts need not be residents
22 of the judicial district. In Los Angeles County, the municipal courts, if any, shall
23 use the same jury pool as that summoned for use in the superior court.

24 **Comment.** Section 200 is amended to reflect the elimination of the justice court, and the
25 authority of the municipal and superior courts in each county to unify their operations in the
26 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10.

27 **Code Civ. Proc. § 396a (amended). Statement of jurisdictional facts**

28 SEC. _____. Section 396a of the Code of Civil Procedure is amended to read:

29 ~~396a. In all actions and proceedings commenced in a justice or municipal court~~
30 which are In a Chapter 5.1 civil matter which is subject to the provisions of
31 Sections 1812.10 and 2984.4 of the Civil Code, or subdivision (b) of Section 395
32 of the Code of Civil Procedure, or is an action or proceeding for an unlawful
33 detainer as defined in Section 1161 of the Code of Civil Procedure, plaintiff shall
34 state facts in the complaint, verified by his plaintiff's oath, or the oath of his
35 plaintiff's attorney, or in an affidavit of the plaintiff or of his plaintiff's attorney
36 filed with the complaint, showing that the action has been commenced in the
37 proper court for the trial of such action or proceeding, and showing that the action
38 is subject to the provisions of Sections 1812.10 and 2984.4 of the Civil Code or

1 subdivision (b) of Section 395 of the Code of Civil Procedure, or is an action for
2 an unlawful detainer. When such affidavit is filed with the complaint, a copy
3 thereof must be served with the summons. Except as herein provided, if such
4 complaint or affidavit be not so filed, no further proceedings shall be had in the
5 action or proceeding, except to dismiss the same without prejudice. However, the
6 court may, on such terms as may be just, permit such affidavit to be filed
7 subsequent to the filing of the complaint, and a copy of such affidavit shall be
8 served on the defendant and the time to answer or otherwise plead shall date from
9 such service. If it appears from such complaint or affidavit, or otherwise, that the
10 court in which such action or proceeding is commenced is not the proper court for
11 the trial thereof, the court in which such action or proceeding is commenced, or a
12 judge thereof, shall, whenever such fact appears, transfer it to such proper court,
13 on its own motion, or on motion of the defendant, unless the defendant consents in
14 writing, or in open court (such consent in open court being entered in the minutes
15 or docket of the court), to the keeping of the action or proceeding in the court
16 where commenced. If such consent be given, the action or proceeding may
17 continue in the court where commenced. Notwithstanding the provisions of
18 Section 1801.1 and subdivision (f) of Section 2983.7 of the Civil Code that
19 consent may be given by a defendant who is represented by counsel at the time the
20 consent is given, and where an action or proceeding is subject to the provisions of
21 subdivision (b) of Section 395 of the Code of Civil Procedure or is for an unlawful
22 detainer, that consent may only be given by a defendant who is represented by
23 counsel at the time the consent is given. In any such case where the transfer of the
24 action or proceeding is ordered under the provisions of this paragraph, if summons
25 is served prior to the filing of such action or proceeding in the court to which it is
26 transferred, as to any defendant, so served, who has not appeared in the action or
27 proceeding, the time to answer or otherwise plead shall date from service upon
28 such defendant of written notice of such filing.

29 When it appears from such complaint or affidavit of the plaintiff that the court in
30 which such action or proceeding is commenced is a proper court for the trial
31 thereof, all proper proceedings may be had, and the action or proceeding may be
32 tried therein; provided, however, that in such case a motion for a transfer of the
33 action or proceeding may be made as in other cases, within the time, upon the
34 grounds, and in the manner provided in this title, and if upon such motion it
35 appears that such action or proceeding is not pending in the proper court, or should
36 for other cause be transferred, the same shall be ordered transferred as provided in
37 this title.

38 When any such action or proceeding is ordered transferred as herein provided,
39 proceedings shall be had, and the costs and fees shall be paid, as provided in
40 Sections 398 and 399 of this code.

41 **Comment.** Section 396a is amended to reflect the elimination of the justice court, and the
42 authority of the municipal and superior courts in each county to unify their operations in the
43 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10. Formerly, each county had one or more

1 municipal courts and a superior court, and Section 396a applied to matters commenced in a
2 municipal court. A Chapter 5.1 civil matter is equivalent to a matter within the original
3 jurisdiction of the municipal court under former law, so Section 396a as amended continues the
4 effect of former law.

5 Section 396a is also amended to make technical changes.

6 **Code Civ. Proc. § 425.10 (amended). Statement of facts**

7 SEC. _____. Section 425.10 of the Code of Civil Procedure is amended to read:

8 425.10. A complaint or cross-complaint shall contain both all of the following:

9 (a) A statement of the facts constituting the cause of action, in ordinary and
10 concise language.

11 (b) A demand for judgment for the relief to which the pleader claims he is to be
12 entitled. If the recovery of money or damages be demanded, the amount thereof
13 shall be stated, unless the action is brought in the superior court to recover actual
14 or punitive damages for personal injury or wrongful death, in which case the
15 amount thereof shall not be stated.

16 (c) In a county in which there is no municipal court, a declaration stating
17 whether the matter is a Chapter 5.1 civil matter or a general civil matter.

18 **Comment** Section 425.10 is amended to reflect the elimination of the justice court, and the
19 authority of the municipal and superior courts in each county to unify their operations in the
20 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10.

21 Subdivision (c) is added to facilitate differentiation between Chapter 5.1 civil matters and
22 general civil matters in a county in which the municipal and superior courts have unified their
23 operations in the superior court. See Section 85 (Chapter 5.1 civil matters and general civil
24 matters) & Comment.

25 **Code Civ. Proc. § 430.10 (amended). Objection to complaint or cross-complaint.**

26 SEC. _____. Section 430.10 of the Code of Civil Procedure is amended to read:

27 430.10. The party against whom a complaint or cross-complaint has been filed
28 may object, by demurrer or answer as provided in Section 430.30, to the pleading
29 on any one or more of the following grounds:

30 (a) The court has no jurisdiction of the subject of the cause of action alleged in
31 the pleading.

32 (b) The person who filed the pleading does not have the legal capacity to sue.

33 (c) There is another action pending between the same parties on the same cause
34 of action.

35 (d) There is a defect or misjoinder of parties.

36 (e) The pleading does not state facts sufficient to constitute a cause of action.

37 (f) The pleading is uncertain. As used in this subdivision, “uncertain” includes
38 ambiguous and unintelligible.

39 (g) In an action founded upon a contract, it cannot be ascertained from the
40 pleading whether the contract is written, is oral, or is implied by conduct.

41 (h) No certificate was filed as required by Section 411.35.

42 (i) No certificate was filed as required by Section 411.36.

1 (j) The declaration pursuant to Section 425.10 stating whether the matter is a
2 Chapter 5.1 civil matter or a general civil matter is erroneous.

3 **Comment.** Section 430.10 is amended to reflect the elimination of the justice court, and the
4 authority of the municipal and superior courts in each county to unify their operations in the
5 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10.

6 See Section 85 (Chapter 5.1 civil matters and general civil matters) & Comment.

7 **Code Civ. Proc. § 489.220 (amended). Amount of undertaking**

8 SEC. _____. Section 489.220 of the Code of Civil Procedure is amended to read:

9 489.220. (a) Except as provided in subdivision (b), the amount of an undertaking
10 filed pursuant to this article shall be two thousand five hundred dollars (\$2,500) in
11 ~~an action in the municipal or justice court~~ a Chapter 5.1 civil matter, and seven
12 thousand five hundred dollars (\$7,500) in ~~an action in the superior court~~ a general
13 civil matter.

14 (b) If, upon objection to the undertaking, the court determines that the probable
15 recovery for wrongful attachment exceeds the amount of the undertaking, it shall
16 order the amount of the undertaking increased to the amount it determines to be
17 the probable recovery for wrongful attachment if it is ultimately determined that
18 the attachment was wrongful.

19 **Comment.** Section 489.220 is amended to reflect the elimination of the justice court, and the
20 authority of the municipal and superior courts in each county to unify their operations in the
21 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10. Formerly, each county had one or more
22 municipal courts and a superior court, and Section 489.220 required an undertaking of \$2,500 for
23 an action in municipal court and \$7,500 for an action in superior court. A Chapter 5.1 civil matter
24 is equivalent to a matter within the original jurisdiction of the municipal court and a general civil
25 matter is equivalent to a matter within the original jurisdiction of the superior court under former
26 law, so Section 489.220 as amended continues the effect of former law. See Section 85 (Chapter
27 5.1 civil matters and general civil matters) & Comment.

28 **Code Civ. Proc. § 580 (amended). Relief awardable in civil causes**

29 SEC. _____. Section 580 of the Code of Civil Procedure is amended to read:

30 580. (a) The relief granted to the plaintiff, if there is no answer, cannot exceed
31 that which he or she shall have demanded in his or her complaint or in the
32 statement required by Section 425.11; but in any other case the court may grant the
33 plaintiff any relief consistent with the case made by the complaint and embraced
34 within the issue. The court may impose liability, regardless of whether the theory
35 upon which liability is sought to be imposed involves legal or equitable principles.

36 (b) Notwithstanding subdivision (a), the substantive relief granted to the plaintiff
37 in a Chapter 5.1 civil matter cannot exceed twenty-five thousand dollars (\$25,000).

38 **Comment.** Section 580 is amended to reflect the elimination of the justice court, and the
39 authority of the municipal and superior courts in each county to unify their operations in the
40 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10.

41 The last sentence of subdivision (a) continues former Section 86(c) without substantive change.

42 Subdivision (b) makes explicit that although the jurisdiction of a unified superior court includes
43 matters in which the amount in controversy exceeds \$25,000, the court cannot grant substantive
44 relief exceeding \$25,000 in a Chapter 5.1 civil matter. Formerly, each county had one or more
45 municipal courts and a superior court, and the jurisdictional limit of the municipal courts

1 constrained the relief awardable in matters tried in those courts. *See Stokus v. Marsh*, 217 Cal.
2 App. 3d 647, 653, 266 Cal. Rptr. 90 (1990) (“we view the jurisdictional limit of Code of Civil
3 Procedure section 86 as applying to the substantive judgment and not the award of costs,
4 including reasonable attorneys’ fees”); *Bakkebo v. Municipal Court*, 124 Cal. App. 3d 229, 177
5 Cal. Rptr. 239 (1981) (“Since the substantive demand is the touchstone of jurisdiction it follows
6 that if the recovery on that demand is within the jurisdiction of the municipal court, that court
7 retains jurisdiction to award costs and attorney fees even though those items, when added to the
8 substantive portion of the judgment, aggregate an amount in excess of the jurisdictional limit.”);
9 *see also* Section 396 (“In any case where the lack of jurisdiction is due solely to an excess in the
10 amount of the demand, the excess may be remitted and the action may continue in the court
11 where it is pending.”). A Chapter 5.1 civil matter is equivalent to a matter within the original
12 jurisdiction of the municipal court under former law, so Section 580 as amended continues and
13 codifies the effect of former law.
14

☞ **Staff Note.** Like matters now triable in municipal court, Chapter 5.1 civil matters would be subject to economic litigation procedures. See Section 91. Litigants may balk at using those abbreviated procedures unless it is clear that the relief cannot exceed \$25,000, as under the cited cases interpreting the effect of the existing jurisdictional limit of the municipal court. Proposed Section 580(b) would make the \$25,000 limit on relief explicit for Chapter 5.1 civil matters, thus preserving and codifying existing policy. Although the limit on relief currently is more explicit in case law than in statutory provisions, clarity on this point is important. Codification seems preferable to awaiting development of case law on the relief awardable in a Chapter 5.1 civil matter.

15 **Code Civ. Proc. § 582.5 (added). Judgment for payment of money**

16 SEC. _____. Section 582.5 is added to the Code of Civil Procedure, to read:

17 582.5. In a Chapter 5.1 civil matter in which the defendant has appeared, if the
18 judgment or order is for the payment of money by the defendant, the defendant
19 shall pay the judgment immediately or at any time and upon terms and conditions,
20 including installment payments, that the court may prescribe. The court may
21 amend the terms and conditions for payment of the judgment or order at any time
22 to provide for installment payments for good cause upon motion by a party and
23 notice to all affected parties, regardless of the nature of the underlying debt and
24 regardless whether the moving party appeared before entry of the judgment or
25 order. In any determination regarding the imposition of terms and conditions upon
26 the payment of the judgment, the court shall consider any factors that would be
27 relevant to the determination of a claim for exemption pursuant to Chapter 4
28 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 or the
29 examination of a debtor pursuant to Article 2 (commencing with Section 708.110)
30 of Chapter 6 of Division 2 of Title 9.

31 **Comment.** Section 582.5 continues former Section 85 without substantive change, except that
32 former Section 85 referred to the municipal and justice courts, whereas Section 582.5 pertains to a
33 Chapter 5.1 civil matter. A Chapter 5.1 civil matter is equivalent to a matter within the original
34 jurisdiction of the municipal court under former law, so Section 582.5 as amended continues the
35 effect of former law. See Section 85 (Chapter 5.1 civil matters and general civil matters) &
36 Comment.
37

☞ **Staff Note.** Section 85 presently gives municipal courts broad discretion to set the terms and conditions for payment of money judgments. As far as the staff has deduced from limited research, the superior courts have less discretion in this regard than the municipal courts. For example, Code of Civil Procedure Section 667.7 authorizes superior courts to enter judgments for periodic payments under certain circumstances in actions for injury or damages against health care providers. In contrast, Section 85 grants municipal and justice courts authority to provide for installment payments “regardless of the nature of the underlying debt and regardless whether the moving party appeared before entry of such judgment or order.” Further research would be necessary to confirm whether the superior courts actually have less discretion than the municipal and justice courts, understand whatever differences do exist, and determine whether such differentiation should continue. The staff recommends adding this area to the Commission’s list of potential study topics.

1 **Code Civ. Proc. § 685.030 (amended). Satisfaction of money judgment**

2 SEC. _____. Section 685.030 of the Code of Civil Procedure is amended to read:
3 685.030. (a) If a money judgment is satisfied in full pursuant to a writ under this
4 title, interest ceases to accrue on the judgment:

5 (1) If the proceeds of collection are paid in a lump sum, on the date of levy.

6 (2) If the money judgment is satisfied pursuant to an earnings withholding order,
7 on the date and in the manner provided in Section 706.024 or Section 706.028.

8 (3) In any other case, on the date the proceeds of sale or collection are actually
9 received by the levying officer.

10 (b) If a money judgment is satisfied in full other than pursuant to a writ under
11 this title, interest ceases to accrue on the date the judgment is satisfied in full.

12 (c) If a money judgment is partially satisfied pursuant to a writ under this title or
13 is otherwise partially satisfied, interest ceases to accrue as to the part satisfied on
14 the date the part is satisfied.

15 (d) For the purposes of subdivisions (b) and (c), the date a money judgment is
16 satisfied in full or in part is the earliest of the following times:

17 (1) The date satisfaction is actually received by the judgment creditor.

18 (2) The date satisfaction is tendered to the judgment creditor or deposited in
19 court for the judgment creditor.

20 (3) The date of any other performance that has the effect of satisfaction.

21 (e) ~~The~~ In a Chapter 5.1 civil matter, the clerk of a ~~municipal or justice~~ court
22 may enter in the Register of Actions a writ of execution on a money judgment as
23 returned wholly satisfied when the judgment amount, as specified on the writ, is
24 fully collected and only an interest deficit of no more than ten dollars (\$10) exists,
25 due to automation of the continual daily interest accrual calculation.

26 **Comment.** Subdivision (e) of Section 685.030 is amended to reflect the elimination of the
27 justice court, and the authority of the municipal and superior courts in each county to unify their
28 operations in the superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10. A Chapter 5.1 civil matter
29 is equivalent to a matter within the original jurisdiction of the municipal court under former law,
30 so Section 685.030 as amended continues the effect of former law. See Section 85 (Chapter 5.1
31 civil matters and general civil matters) & Comment.

1 ☞ **Staff Note.** The staff is researching why Section 685.030(e) is presently limited to municipal
2 and justice courts. If a comparable provision already exists for superior courts, then the
3 amendment of Section 685.030(e) would be unnecessary.

4 **Code Civ. Proc. § 720.160 (amended). Undertaking by creditor**

5 SEC. _____. Section 720.160 of the Code of Civil Procedure is amended to read:
6 720.160. (a) If the creditor files with the levying officer an undertaking that
7 satisfies the requirements of this section within the time allowed under subdivision
8 (b) of Section 720.140:

9 (1) The levying officer shall execute the writ in the manner provided by law
10 unless the third person files an undertaking to release the property pursuant to
11 Chapter 6 (commencing with Section 720.610).

12 (2) After sale, payment, or delivery of the property pursuant to the writ, the
13 property is free of all claims of the third person for which the creditor has given
14 the undertaking.

15 (b) Subject to Sections 720.770 and 996.010, unless the creditor elects to file an
16 undertaking in a larger amount, the amount of the undertaking filed by the creditor
17 under this section shall be in the amount of:

18 (1) ~~If the action is pending or the judgment was entered in the superior court,~~
19 ~~seven thousand five hundred dollars (\$7,500),~~ In a Chapter 5.1 civil matter, two
20 thousand five hundred dollars (\$2,500), or twice the amount of the execution lien
21 as of the date of levy or other enforcement lien as of the date it was created,
22 whichever is the lesser amount.

23 (2) ~~If the action is pending or the judgment was entered in a municipal or justice~~
24 ~~court, two thousand five hundred dollars (\$2,500),~~ In a general civil matter, seven
25 thousand five hundred dollars (\$7,500), or twice the amount of the execution lien
26 as of the date of levy or other enforcement lien as of the date it was created,
27 whichever is the lesser amount.

28 (c) An undertaking given by the creditor under this chapter shall:

29 (1) Be made in favor of the third person.

30 (2) Indemnify the third person against any loss, liability, damages, costs, and
31 attorney's fees, incurred by reason of the enforcement proceedings.

32 (3) Be conditioned on a final judgment that the third person owns or has the right
33 of possession of the property.

34 (d) If the creditor is a public entity exempt from giving an undertaking, the
35 public entity shall, in lieu of filing the undertaking, file with the levying officer a
36 notice stating that the public entity opposes the claim of the third person. When so
37 filed, the notice is deemed to satisfy the requirement of this section that an
38 undertaking be filed.

39 **Comment.** Section 720.160 is amended to reflect the elimination of the justice court, and the
40 authority of the municipal and superior courts in each county to unify their operations in the
41 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10. Formerly, each county had one or more
42 municipal courts and a superior court, and Section 720.160 required an undertaking of \$2,500 for
43 an action in municipal court and \$7,500 for an action in superior court. A Chapter 5.1 civil matter

1 is equivalent to a matter within the original jurisdiction of the municipal court and a general civil
2 matter is equivalent to a matter within the original jurisdiction of the superior court under former
3 law, so Section 720.160 as amended continues the effect of former law. See Section 85 (Chapter
4 5.1 civil matters and general civil matters) & Comment.

5 **Code Civ. Proc. § 720.260 (amended). Undertaking by creditor**

6 SEC. _____. Section 720.260 of the Code of Civil Procedure is amended to read:

7 720.260. (a) If the creditor within the time allowed under subdivision (b) of
8 Section 720.240 either files with the levying officer an undertaking that satisfies
9 the requirements of this section and a statement that satisfies the requirements of
10 Section 720.280 or makes a deposit with the levying officer of the amount claimed
11 under Section 720.230:

12 (1) The levying officer shall execute the writ in the manner provided by law
13 unless, in a case where the creditor has filed an undertaking, the secured party or
14 lienholder files an undertaking to release the property pursuant to Chapter 6
15 (commencing with Section 720.610).

16 (2) After sale, payment, or delivery of the property pursuant to the writ, the
17 property is free of all claims or liens of the secured party or lienholder for which
18 the creditor has given the undertaking or made the deposit.

19 (b) Subject to Sections 720.770 and 996.010, unless the creditor elects to file an
20 undertaking in a larger amount, the amount of the undertaking filed by the creditor
21 under this section shall be in the amount of:

22 (1) ~~If the action is pending or the judgment was entered in the superior court,~~
23 ~~seven thousand five hundred dollars (\$7,500),~~ In a Chapter 5.1 civil matter, two
24 thousand five hundred dollars (\$2,500), or twice the amount of the execution lien
25 as of the date of levy or other enforcement lien as of the date it was created,
26 whichever is the lesser amount.

27 (2) ~~If the action is pending or the judgment was entered in a municipal or justice~~
28 ~~court, two thousand five hundred dollars (\$2,500),~~ In a general civil matter, seven
29 thousand five hundred dollars (\$7,500) or twice the amount of the execution lien
30 as of the date of levy or other enforcement lien as of the date it was created,
31 whichever is the lesser amount.

32 (c) An undertaking given by the creditor under this chapter shall:

33 (1) Be made in favor of the secured party or lienholder.

34 (2) Indemnify the secured party or lienholder against any loss, liability, damages,
35 costs, and attorney's fees, incurred by reason of the enforcement proceedings.

36 (3) Be conditioned on a final judgment that the security interest or lien of the
37 third person is entitled to priority over the creditor's lien.

38 (d) If the creditor is a public entity exempt from giving an undertaking, the
39 public entity shall, in lieu of filing the undertaking, file with the levying officer a
40 notice stating that the public entity opposes the claim of the third person. When so
41 filed, the notice is deemed to satisfy the requirement of this section that an
42 undertaking be filed.

1 **Comment.** Section 720.260 is amended to reflect the elimination of the justice court, and the
2 authority of the municipal and superior courts in each county to unify their operations in the
3 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10. Formerly, each county had one or more
4 municipal courts and a superior court, and Section 720.260 required an undertaking of \$2,500 for
5 an action in municipal court and \$7,500 for an action in superior court. A Chapter 5.1 civil matter
6 is equivalent to a matter within the original jurisdiction of the municipal court and a general civil
7 matter is equivalent to a matter within the original jurisdiction of the superior court under former
8 law, so Section 720.160 as amended continues the effect of former law. See Section 85 (Chapter
9 5.1 civil matters and general civil matters) & Comment.

10 **Code Civ. Proc. § 904.1 (amended). Taking appeal in general civil matter**

11 SEC. _____. Section 904.1 of the Code of Civil Procedure is amended to read:

12 904.1. (a) An appeal may be taken ~~from a superior court~~ in a general civil matter
13 in the following cases:

14 (1) From a judgment, except (A) an interlocutory judgment, other than as
15 provided in paragraphs (8), (9), and (11), (B) a judgment of contempt which is
16 made final and conclusive by Section 1222, or (C) ~~a judgment on appeal from a~~
17 ~~municipal court or a justice court or a small claims court, or~~ (D) a judgment
18 granting or denying a petition for issuance of a writ of mandamus or prohibition
19 directed to a municipal court or ~~a justice court~~ the superior court in a county in
20 which there is no municipal court or the judge or judges thereof which relates to a
21 matter pending in the municipal or justice superior court. However, an appellate
22 court may, in its discretion, review a judgment granting or denying a petition for
23 issuance of a writ of mandamus or prohibition, or a judgment or order for the
24 payment of monetary sanctions, upon petition for an extraordinary writ.

25 (2) From an order made after a judgment made appealable by paragraph (1).

26 (3) From an order granting a motion to quash service of summons or granting a
27 motion to stay or dismiss the action on the ground of inconvenient forum.

28 (4) From an order granting a new trial or denying a motion for judgment
29 notwithstanding the verdict.

30 (5) From an order discharging or refusing to discharge an attachment or granting
31 a right to attach order.

32 (6) From an order granting or dissolving an injunction, or refusing to grant or
33 dissolve an injunction.

34 (7) From an order appointing a receiver.

35 (8) From an interlocutory judgment, order, or decree, hereafter made or entered
36 in an action to redeem real or personal property from a mortgage thereof, or a lien
37 thereon, determining the right to redeem and directing an accounting.

38 (9) From an interlocutory judgment in an action for partition determining the
39 rights and interests of the respective parties and directing partition to be made.

40 (10) From an order made appealable by the provisions of the Probate Code or the
41 Family Code.

42 (11) From an interlocutory judgment directing payment of monetary sanctions
43 by a party or an attorney for a party if the amount exceeds five thousand dollars
44 (\$5,000).

1 (12) From an order directing payment of monetary sanctions by a party or an
2 attorney for a party if the amount exceeds five thousand dollars (\$5,000).

3 (b) Sanction orders or judgments of five thousand dollars (\$5,000) or less against
4 a party or an attorney for a party may be reviewed on an appeal by that party after
5 entry of final judgment in the main action, or, at the discretion of the court of
6 appeal, may be reviewed upon petition for an extraordinary writ.

7 **Comment.** Section 904.1 is amended to reflect the elimination of the justice court, and the
8 authority of the municipal and superior courts in each county to unify their operations in the
9 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10. For guidance on what constitutes a general
10 civil matter, see Section 85 (Chapter 5.1 civil matters and general civil matters) & Comment. For
11 guidance on the appellate jurisdiction of a general civil matter, see Section 904.5 (appellate
12 jurisdiction) & Comment.

13 Paragraph (a)(1)(C), which made nonreviewable “a judgment on appeal from municipal court
14 or a justice court or a small claims court,” is deleted as unnecessary, because the introductory
15 clause of Section 904.1 as amended already excludes those matters from its coverage.

16 **Code Civ. Proc. § 904.2 (amended). Taking appeal in Chapter 5.1 civil matter**

17 SEC. _____. Section 904.2 of the Code of Civil Procedure is amended to read:

18 904.2. An appeal may be taken ~~from a municipal or justice court~~ in a Chapter 5.1
19 civil matter in the following cases:

20 (a) From a judgment, except (1) an interlocutory judgment, or (2) a judgment of
21 contempt which is made final and conclusive by Section 1222.

22 (b) From an order made after a judgment made appealable by subdivision (a).

23 (c) From an order changing or refusing to change the place of trial.

24 (d) From an order granting a motion to quash service of summons or granting a
25 motion to stay or dismiss the action on the ground of inconvenient forum.

26 (e) From an order granting a new trial or denying a motion for judgment
27 notwithstanding the verdict.

28 (f) From an order discharging or refusing to discharge an attachment or granting
29 a right to attach order.

30 (g) From an order granting or dissolving an injunction, or refusing to grant or
31 dissolve an injunction.

32 (h) From an order appointing a receiver.

33 ~~(i) From a judgment of the small claims court.~~

34 **Comment.** Section 904.2 is amended to reflect the elimination of the justice court, and the
35 authority of the municipal and superior courts in each county to unify their operations in the
36 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10. For guidance on what constitutes a Chapter
37 5.1 civil matter, see Section 85 (Chapter 5.1 civil matters and general civil matters) & Comment.
38 For guidance on the appellate jurisdiction of a Chapter 5.1 civil matter, see Section 904.5
39 (appellate jurisdiction).

40 Subdivision (i) is deleted because review of a judgment of the small claims division is governed
41 by Sections 116.710-116.795.

42 **Code Civ. Proc. § 904.5 (amended). Appellate jurisdiction**

43 SEC. _____. Section 904.5 of the Code of Civil Procedure is amended to read:

1 904.5. Appeals (a) Any appealable Chapter 5.1 civil matter is subject to the
2 appellate jurisdiction of the appellate division, except that appeals from the small
3 claims division of a justice or municipal or superior court shall be governed by the
4 Small Claims Act (Chapter 5.5 (commencing with Section 116.110) of Title 1 of
5 Part 1).

6 (b) Any appealable general civil matter is subject to the appellate jurisdiction of
7 the court of appeal.

8 (c) Nothing in this section provides a right of appeal in any civil cause that is
9 nonappealable by law.

10 **Comment.** Section 904.5 is amended to reflect the elimination of the justice court, and the
11 authority of the municipal and superior courts in each county to unify their operations in the
12 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10.

13 Subdivisions (a) and (b) track Constitution Article VI, Section 11. See Section 85 (Chapter 5.1
14 civil matters and general civil matters) & Comment. For the circumstances under which an appeal
15 may be taken in a Chapter 5.1 civil matter, see Section 904.2. For the circumstances under which
16 an appeal may be taken in a general civil matter, see Section 904.1.

17 Subdivision (c) is included to ensure that subdivisions (a) and (b) do not provide a basis for
18 appealing the result in any civil cause that is otherwise nonappealable by law.

19 **Code Civ. Proc. § 911 (amended). Transfer from appellate division to court of appeal**

20 SEC. _____. Section 911 of the Code of Civil Procedure is amended to read:

21 911. A court of appeal may order any case on appeal within the ~~original~~
22 ~~jurisdiction of the municipal and justice courts~~ superior court in its district
23 transferred to it for hearing and decision as provided by rules of the Judicial
24 Council when the superior court certifies, or the court of appeal determines, that
25 such transfer appears necessary to secure uniformity of decision or to settle
26 important questions of law.

27 No case in which there is a right on appeal to a trial anew in the superior court
28 shall be transferred pursuant to this section before a decision in such case becomes
29 final therein.

30 A court to which any case is transferred pursuant to this section shall have
31 similar power to review any matter and make orders and judgments as the
32 appellate division of the superior court would have in such case, except that if the
33 case was tried anew in the superior court, the ~~reviewing court of appeal~~ shall have
34 similar power to review any matter and make orders and judgments as it has in a
35 case ~~within the original jurisdiction of the superior court~~ appealed pursuant to
36 Section 904.1 of the Code of Civil Procedure.

37 **Comment.** Section 911 is amended to reflect the elimination of the justice court, and the
38 authority of the municipal and superior courts in each county to unify their operations in the
39 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10. The section applies to appeals taken to the
40 appellate division of the superior court (see Section 904.5 (appellate jurisdiction)) and to appeals
41 taken to the superior court where the appeal is in the form of a trial de novo (see, e.g., Section
42 116.770 (small claims appeals)).

43 **Code Civ. Proc. § 1033 (amended). Small recovery**

44 SEC. _____. Section 1033 of the Code of Civil Procedure is amended to read:

1 1033. (a) ~~In the superior court a general civil matter,~~ costs or any portion of
2 claimed costs shall be as determined by the court in its discretion in accordance
3 with Section 1034 where the prevailing party recovers a judgment that could have
4 been rendered in a court of lesser jurisdiction a Chapter 5.1 civil matter.

5 (b) ~~In a municipal or justice court, when~~ When a prevailing plaintiff recovers
6 less than the amount prescribed by law as the maximum limitation upon the
7 jurisdiction of the small claims ~~court~~ division, the following shall apply:

8 (1) When the party could have brought the action in the small claims ~~court~~
9 division but did not do so, the court may, in its discretion, allow or deny costs to
10 the prevailing party, or may allow costs in part in any amount as it deems proper.

11 (2) When the party could not have brought the action in the small claims ~~court~~
12 division, costs and necessary disbursements shall be limited to the actual cost of
13 the filing fee, the actual cost of service of process, and, when otherwise
14 specifically allowed by law, reasonable attorney fees. However, those costs shall
15 only be awarded to the plaintiff if the court is satisfied that prior to the
16 commencement of the action, the plaintiff informed the defendant in writing of the
17 intended legal action against the defendant and that legal action could result in a
18 judgment against the defendant which would include the costs and necessary
19 disbursements allowed by this paragraph.

20 **Comment.** Section 1033 is amended to reflect the elimination of the justice court, and the
21 authority of the municipal and superior courts in each county to unify their operations in the
22 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10. For guidance on what constitutes a general
23 civil matter, see Section 85 (Chapter 5.1 civil matters and general civil matters) & Comment.

24 Section 1033 is also amended to correct references to the small claims court, which are
25 colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

26 **Code Civ. Proc. § 1068 (amended). Courts authorized to grant writ of review**

27 SEC. _____. Section 1068 of the Code of Civil Procedure is amended to read:

28 1068. (a) ~~A~~ A writ of review may be granted by any court, except a municipal ~~or~~
29 ~~justice~~ court, when an inferior tribunal, board, or officer, exercising judicial
30 functions, has exceeded the jurisdiction of such tribunal, board, or officer, and
31 there is no appeal, nor, in the judgment of the court, any plain, speedy, and
32 adequate remedy.

33 (b) The appellate division of the superior court may grant a writ of review
34 directed to the superior court in a Chapter 5.1 civil matter.

35 **Comment.** Section 1068 is amended to reflect the elimination of the justice court, and the
36 authority of the municipal and superior courts in each county to unify their operations in the
37 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10. For guidance on what constitutes a Chapter
38 5.1 civil matter, see Section 85 (Chapter 5.1 civil matters and general civil matters) & Comment.

39 **Code Civ. Proc. § 1085 (amended). Courts authorized to grant writ of mandate**

40 SEC. _____. Section 1085 of the Code of Civil Procedure is amended to read:

41 1085. (a) ~~It~~ A writ of mandate may be issued by any court, except a municipal ~~or~~
42 ~~justice~~ court, to any inferior tribunal, corporation, board, or person, to compel the
43 performance of an act which the law specially enjoins, as a duty resulting from an

1 office, trust, or station; or to compel the admission of a party to the use and
2 enjoyment of a right or office to which ~~he~~ the party is entitled, and from which ~~he~~
3 the party is unlawfully precluded by such inferior tribunal, corporation, board or
4 person.

5 (b) The appellate division of the superior court may grant a writ of mandate
6 directed to the superior court in a Chapter 5.1 civil matter.

7 **Comment.** Section 1085 is amended to reflect the elimination of the justice court, and the
8 authority of the municipal and superior courts in each county to unify their operations in the
9 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10. For guidance on what constitutes a Chapter
10 5.1 civil matter, see Section 85 (Chapter 5.1 civil matters and general civil matters) & Comment.

11 Section 1085 is also amended to make technical changes.

12 ☞ **Staff Note.** The amendment of Section 1085 proposed here does not take into account the
13 changes proposed in SB 209 (Kopp), the Commission's pending bill on judicial review of agency
14 action. This is but one example of a larger problem: How to harmonize the Commission's work
15 on trial court unification with pending legislation affecting provisions in the Commission's
16 proposal. For now, attempting to address that problem would be premature.

17 **Code Civ. Proc. § 1103 (amended). Courts authorized to grant writ of prohibition**

18 SEC. _____. Section 1103 of the Code of Civil Procedure is amended to read:

19 1103. (a) ~~It~~ A writ of prohibition may be issued by any court, except municipal
20 ~~or justice~~ courts, to an inferior tribunal or to a corporation, board, or person, in all
21 cases where there is not a plain, speedy, and adequate remedy in the ordinary
22 course of law. It is issued upon the verified petition of the person beneficially
23 interested.

24 (b) The appellate division of the superior court may grant a writ of prohibition
25 directed to the superior court in a Chapter 5.1 civil matter.

26 **Comment.** Section 1103 is amended to reflect the elimination of the justice court, and the
27 authority of the municipal and superior courts in each county to unify their operations in the
28 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10. For guidance on what constitutes a Chapter
29 5.1 civil matter, see Section 85 (Chapter 5.1 civil matters and general civil matters) & Comment.

30 **Code Civ. Proc. § 1134 (amended). Judgment and costs**

31 SEC. _____. Section 1134 of the Code of Civil Procedure is amended to read:

32 1134. In all courts the statement must be filed with the clerk of the court in
33 which the judgment is to be entered, who must endorse upon it, and enter a
34 judgment of such court for the amount confessed with the costs hereinafter set
35 forth. At the time of filing, the plaintiff shall pay as court costs which shall
36 become a part of the judgment the following fees: ~~in superior courts~~ in a general
37 civil matter fifteen dollars (\$15) and ~~in municipal courts and justice courts a~~
38 Chapter 5.1 civil matter ten dollars (\$10). No fee shall be collected from the
39 defendant. No fee shall be paid by the clerk of the court in which said confession
40 of judgment is filed for the law library fund nor for services of any court reporter.
41 The statement and affidavit, with the judgment endorsed thereon, becomes the
42 judgment roll.

1 **Comment.** Section 1134 is amended to reflect the elimination of the justice court, and the
2 authority of the municipal and superior courts in each county to unify their operations in the
3 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10. For guidance on what constitutes a Chapter
4 5.1 civil matter and what constitutes a general civil matter, see Section 85 & Comment.

5 **Code Civ. Proc. § 1161.2 (amended). Case court records**

6 SEC. _____. Section 1161.2 of the Code of Civil Procedure is amended to read:

7 1161.2. (a) Except as provided in subdivision (g), in any case filed under this
8 chapter ~~in municipal court~~ as a Chapter 5.1 civil matter, the court clerk shall not
9 allow access to the court file, index, register of actions, or other court records until
10 60 days following the date the complaint is filed, except pursuant to an ex parte
11 court order upon a showing of good cause therefor by any person including, but
12 not limited to, a newspaper publisher. However, the clerk of the court shall allow
13 access to the court file to a party in the action, an attorney of a party in the action,
14 or any other person who (1) provides to the clerk the names of at least one
15 plaintiff, one defendant, and the address, including the apartment, unit, or space
16 number, if applicable, of the subject premises, or (2) provides to the clerk the
17 name of one of the parties or the case number and can establish through proper
18 identification that he or she resides at the subject premises.

19 (b) For purposes of this section “good cause” includes, but is not limited to, the
20 gathering of newsworthy facts by a person described in Section 1070 of the
21 Evidence Code. It is the intent of the Legislature that a simple procedure be
22 established to request the ex parte order described in subdivision (a).

23 (c) Except as provided in subdivision (g), upon the filing of any case so
24 restricted, the court clerk shall mail notice to each defendant named in the action.
25 The notice shall be mailed to the address provided in the complaint. The notice
26 shall contain a statement that an unlawful detainer complaint (eviction action) has
27 been filed naming that party as a defendant, and that access to the court file will be
28 delayed for 60 days except to a party, an attorney for one of the parties, or any
29 other person who (1) provides to the clerk the names of at least one plaintiff and
30 one defendant in the action and provides to the clerk the address, including any
31 applicable apartment, unit, or space number, of the subject premises, or (2)
32 provides to the clerk the name of one of the parties in the action or the case
33 number and can establish through proper identification that he or she lives at the
34 subject premises. The notice shall also contain a statement that access to the court
35 index, register of actions, or other records is not permitted until 60 days after the
36 complaint is filed, except pursuant to an ex parte order upon a showing of good
37 cause therefor. The notice shall contain on its face the name and phone number of
38 the county bar association and the name and phone number of an office funded by
39 the federal Legal Services Corporation which provides legal services to low-
40 income persons in the county in which the action is filed. The notice shall state
41 that these numbers may be called for legal advice regarding the case. The notice
42 shall be issued between 24 and 48 hours of the filing of the complaint, excluding
43 weekends and holidays. One copy of the notice shall be addressed to “all

1 occupants” and mailed separately to the subject premises. The notice shall not
2 constitute service of the summons and complaint.

3 (d) Notwithstanding any other provision of law, the court shall, upon adoption of
4 a resolution by the board of supervisors requiring such a fee, charge an additional
5 fee for filing a first appearance by the plaintiff in an amount equal in the aggregate
6 to the actual cost of complying with this section, but which shall not exceed a
7 maximum of four dollars (\$4). This fee shall be included as part of the total filing
8 fee for actions filed under this chapter. Any such board resolution in effect on
9 January 1, 1994, shall remain in effect until it is repealed.

10 (e) A municipal court or the superior court in a county in which there is no
11 municipal court, after consultation with local associations of rental property
12 owners, tenant groups, and providers of legal services to tenants, may exempt
13 itself from the operation of this section upon a finding that unscrupulous eviction
14 defense services are not a substantial problem in the judicial district in which the
15 municipal court is located or the county in which the superior court is located. The
16 court shall review the finding every 12 months. An exempt court shall not charge
17 the additional fee authorized in subdivision (d).

18 (f) The Judicial Council shall examine the extent to which requests for access to
19 files pursuant to an ex parte order under subdivision (a) are granted or denied, and
20 if denied, the reason for the denial of access.

21 (g) This section shall not apply to a case which seeks to terminate a mobilehome
22 park tenancy if the statement of the character of the proceeding in the caption of
23 the complaint clearly indicates that the complaint seeks termination of a
24 mobilehome park tenancy.

25 **Comment.** Section 1161.2 is amended to reflect the elimination of the justice court, and the
26 authority of the municipal and superior courts in each county to unify their operations in the
27 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10. Formerly, each county had one or more
28 municipal courts and a superior court, and subdivision (a) referred to an unlawful detainer case
29 filed in a municipal court. A Chapter 5.1 civil matter is equivalent to a matter within the original
30 jurisdiction of the municipal court under former law, so Section 1161.2 as amended continues the
31 effect of former law. See Section 85 (Chapter 5.1 civil matters and general civil matters) &
32 Comment.

33 **Code Civ. Proc. § 1710.20 (amended). Filing of application**

34 SEC. _____. Section 1710.20 of the Code of Civil Procedure is amended to read:
35 1710.20. (a) The In a county in which there is a municipal court, the application
36 shall be filed in a municipal or justice court in all cases in which the sister state
37 judgment amounts to twenty-five thousand dollars (\$25,000) or less—and. The
38 application shall be filed in a superior court in all other cases.

39 (b) Subject to the power of the court to transfer proceedings under this chapter
40 pursuant to Title 4 (commencing with Section 392) of Part 2, the proper county for
41 the filing of an application is any of the following:

- 42 (1) The county in which any judgment debtor resides; or
43 (2) If no judgment debtor is a resident, any county in this state.

1 **Comment.** Section 1710.20 is amended to reflect the elimination of the justice court, and the
2 authority of the municipal and superior courts in each county to unify their operations in the
3 superior court. Cal. Const. art. VI, §§ 1, 5(b), (e), 10.

1 PROVISIONS REPEALED AS OBSOLETE

2 **Code Civ. Proc. § 221 (repealed). Experimental eight person juries**

3 SEC. _____. Section 221 of the Code of Civil Procedure is repealed.

4 221. (a) A trial jury in civil actions in municipal and justice courts may consist
5 of eight persons in the County of Los Angeles, pursuant to rules adopted by the
6 Judicial Council, as an experimental project operative until July 1, 1989.

7 (b) The Judicial Council shall appoint an advisory committee which shall
8 include at least one judge of each court or courts in which the project will take
9 place, one court administrator from that court or courts, or his or her designee, and
10 one member of the Los Angeles County Bar Association, Trial Lawyers Section,
11 who practices in the municipal or justice courts, to make recommendations
12 regarding the design of the eight-person jury experiment. The Judicial Council
13 shall adopt rules for the implementation of the project, including rules governing
14 the assignment of cases to eight person juries during the experimental period, and
15 establish procedures for the collection and evaluation of data.

16 (c) The Judicial Council shall report to the Legislature no later than January 1,
17 1990, comparing the performance of eight and 12 person juries. The comparison
18 shall include, but not be limited to, the following factors:

19 (1) Cross-sectional representation of the community.

20 (2) Numbers of verdicts favoring plaintiffs or defendants, and size of awards.

21 (3) Accuracy, consistency, and reliability of awards.

22 (4) Time required for impanelment, trial, and deliberations.

23 (5) Public and private costs of the jury.

24 (d) Notwithstanding the provisions of Section 206, the project courts shall
25 collect and provide to the Judicial Council the data required for a proper
26 evaluation of the experiment. Any bona fide researcher or research organization
27 shall be permitted access to any data regarding the conduct or evaluation of the
28 pilot project.

29 **Comment.** Section 221 is repealed as obsolete.

30 **Code Civ. Proc. § 1012.5 (repealed). Facsimile transmission (FAX)**

31 SEC. _____. Section 1012.5 of the Code of Civil Procedure is repealed.

32 1012.5. (a) The Legislature finds that the use of facsimile transmission (FAX
33 machines) has become commonplace in business and government. Currently, there
34 are over 2.5 million FAX machines in the nation and the legal profession owns
35 approximately 12 percent of these machines. Across the nation, courts are starting
36 to address the use of FAX machines in the judicial system as a means of
37 transmitting documents to the courts and to lawyers and litigants.

38 Use of FAX transmission of documents may alleviate congestion in and around
39 courthouses, promote savings in the time spent by attorneys in filing documents

1 with the courts and with other attorneys and litigants, and ultimately, will result in
2 a savings to the legal consumer.

3 Therefore, the Judicial Council shall conduct pilot projects to encompass cases
4 filed in three or more superior courts and three or more municipal or justice courts
5 from January 1, 1990, to December 31, 1992, to determine how best to implement
6 the use of facsimile transmission of documents in the judicial system and to assess
7 the extent of savings due to implementation of FAX transmission. Moreover, the
8 Judicial Council shall report to the Legislature on the results of these pilot projects
9 and its specific proposals for implementation.

10 (b) The Judicial Council shall determine the effectiveness of these pilot projects
11 by conducting a survey of attorneys, judicial officers, clerks of court, and process
12 servers registered pursuant to Chapter 16 (commencing with Section 22350) of
13 Division 8 of the Business and Professions Code, to determine whether the pilot
14 project is effective in: (1) reducing courthouse congestion, (2) increasing
15 courthouse filings by FAX to at least 25 percent of all filings in those courts
16 participating in the pilot projects, (3) producing a time savings of at least 50
17 percent of the time normally required to file documents with the court, and (4)
18 producing a savings in costs billed to the client.

19 (c) The Judicial Council shall report to the Legislature on these pilot projects and
20 make its recommendations on any changes in law needed to promote uniform,
21 efficient, and effective service or filing of legal documents by FAX on or before
22 December 31, 1991. The report shall include a compilation of data, proposed
23 standards, rules, or statutes for: (1) the types of facsimile machines, including
24 personal computers with facsimile modems, that are suitable for use by the courts
25 in receiving legal documents for filing, (2) the quality of paper to be used to ensure
26 the permanency of court records, (3) the readability of documents sent by
27 facsimile transmission, (4) the service and filing of documents which require an
28 original signature, (5) the service on other parties to the action of legal documents
29 by FAX, (6) the filing with the court of originals of documents first filed by FAX,
30 (7) if necessary, modification of time periods for service and filing of documents
31 by FAX, and (8) the cost to the courts for the equipment, supplies, additional staff,
32 and administrative costs associated with the filing of legal documents by FAX and
33 how these costs should be recovered.

34 (d) Notwithstanding any other provision of law, the Judicial Council may adopt
35 rules of court for use in the pilot project counties to facilitate the purposes of the
36 pilot project and to provide an appropriate experiment. Any rules of court adopted
37 by the Judicial Council pursuant to this subdivision shall not affect the
38 requirements for personal or substituted service of the summons and complaint or
39 any other opening paper.

40 **Comment.** Section 1012.5 is repealed as obsolete.

41  **Staff Note.** The pilot project established by Section 1012.5 should be over. Professor Kelso
42 is confirming this with the Judicial Council.

1 CORRECTION OF REFERENCES TO THE APPELLATE DIVISION

2 **Code Civ. Proc. § 170.7 (technical amendment). Judge serving on appellate division**

3 SEC. _____. Section 170.7 of the Code of Civil Procedure is amended to read:

4 170.7. Section 170.6 does not apply to a judge designated or assigned to serve on
5 the appellate ~~department~~ division of a superior court in his the judge's capacity as
6 a judge of such ~~department~~ that division.

7 **Comment.** Section 170.7 is amended to make technical changes, including correction of
8 references to the appellate department, which are inconsistent with constitutional references to the
9 appellate division. See Cal. Const. art. VI, § 4.

1 CORRECTION OF REFERENCES TO THE SMALL CLAIMS COURT
2

☞ **Staff Note.** At its May meeting, the Commission decided that statutory references to the “small claims court” should be corrected to “small claims division” in the implementing legislation for SCA 4. Minutes at pp. 12-13. Those amendments are shown below. In the interest of simplifying the implementing legislation, it may be appropriate to reconsider that decision.

3
4 **Heading of Chapter 5.5 (commencing with Section 116.110) (technical amendment)**

5 SEC. _____. The heading of Chapter 5.5 (commencing with Section 116.110) of
6 Title 1 of Part 1 of the Code of Civil Procedure is amended, to read:

7 CHAPTER 5.5 SMALL CLAIMS COURT DIVISION

8 **Comment.** The heading “Chapter 5.5 Small Claims Court” is amended to correct the reference
9 to the small claims court, which is colloquially acceptable but technically incorrect. See Section
10 116.210 & Comment.

11 **Code Civ. Proc. § 116.220 (technical amendment). Jurisdiction**

12 SEC. _____. Section 116.220 of the Code of Civil Procedure is amended to read:

13 116.220. (a) The small claims ~~court~~ division shall have jurisdiction in the
14 following actions:

15 (1) Except as provided in subdivisions (c), (e), and (f), for recovery of money, if
16 the amount of the demand does not exceed five thousand dollars (\$5,000).

17 (2) Except as provided in subdivisions (c), (e), and (f), to enforce payment of
18 delinquent unsecured personal property taxes in an amount not to exceed five
19 thousand dollars (\$5,000), if the legality of the tax is not contested by the
20 defendant.

21 (3) To issue the writ of possession authorized by Sections 1861.5 and 1861.10 of
22 the Civil Code if the amount of the demand does not exceed five thousand dollars
23 (\$5,000).

24 (4) To confirm, correct, or vacate a fee arbitration award not exceeding five
25 thousand dollars (\$5,000) between an attorney and client that is binding or has
26 become binding, or to conduct a hearing de novo between an attorney and client
27 after nonbinding arbitration of a fee dispute involving no more than five thousand
28 dollars (\$5,000) in controversy, pursuant to Article 13 (commencing with Section
29 6200) of Chapter 4 of Division 3 of the Business and Professions Code.

30 (b) In any action seeking relief authorized by subdivision (a), the court may
31 grant equitable relief in the form of rescission, restitution, reformation, and
32 specific performance, in lieu of, or in addition to, money damages. The court may
33 issue a conditional judgment. The court shall retain jurisdiction until full payment
34 and performance of any judgment or order.

1 (c) Notwithstanding subdivision (a), the small claims ~~court~~ division shall have
2 jurisdiction over a defendant guarantor who is required to respond based upon the
3 default, actions, or omissions of another, only if the demand does not exceed two
4 thousand five hundred dollars (\$2,500).

5 (d) In any case in which the lack of jurisdiction is due solely to an excess in the
6 amount of the demand, the excess may be waived, but any waiver shall not
7 become operative until judgment.

8 (e) Notwithstanding subdivision (a), in any action filed by a plaintiff
9 incarcerated in a Department of Corrections facility or a Youth Authority facility,
10 the small claims ~~court~~ division shall have jurisdiction over a defendant only if the
11 plaintiff has alleged in the complaint that he or she has exhausted his or her
12 administrative remedies against that department, including compliance with
13 Sections 905.2 and 905.4 of the Government Code. The final administrative
14 adjudication or determination of the plaintiff's administrative claim by the
15 department may be attached to the complaint at the time of filing in lieu of that
16 allegation.

17 (f) In any action governed by subdivision (e), if the plaintiff fails to provide
18 proof of compliance with the requirements of subdivision (e) at the time of trial,
19 the judicial officer shall, at his or her discretion, either dismiss the action or
20 continue the action to give the plaintiff an opportunity to provide such proof.

21 (g) For purposes of this section, "department" includes an employee of a
22 department against whom a claim has been filed under this chapter arising out of
23 his or her duties as an employee of that department.

24 **Comment.** Section 116.220 is amended to correct references to the small claims court, which
25 are colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

26 **Code Civ. Proc. § 116.320 (technical amendment). Commencement of action**

27 SEC. _____. Section 116.320 of the Code of Civil Procedure is amended to read:

28 116.320. (a) A plaintiff may commence an action in the small claims ~~court~~
29 division by filing a claim under oath with the clerk of the small claims ~~court~~
30 division in person or by mail.

31 (b) The claim form shall be a simple nontechnical form approved or adopted by
32 the Judicial Council. The claim form shall set forth a place for (1) the name and
33 address of the defendant, if known; (2) the amount and the basis of the claim; (3)
34 that the plaintiff, where possible, has demanded payment and, in applicable cases,
35 possession of the property; (4) that the defendant has failed or refused to pay, and,
36 where applicable, has refused to surrender the property; and (5) that the plaintiff
37 understands that the judgment on his or her claim will be conclusive and without a
38 right of appeal.

39 (c) The form or accompanying instructions shall include information that the
40 plaintiff (1) may not be represented by an attorney, (2) has no right of appeal, and
41 (3) may ask the court to waive fees for filing and serving the claim on the ground

1 that the plaintiff is unable to pay them, using the forms approved by the Judicial
2 Council for that purpose.

3 **Comment.** Section 116.250 is amended to correct references to the small claims court, which
4 are colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

5 **Code Civ. Proc. § 116.420 (technical amendment). Assigned claims**

6 SEC. _____. Section 116.420 of the Code of Civil Procedure is amended to read:
7 116.420. (a) No claim shall be filed or maintained in a small claims court
8 division by the assignee of the claim.

9 (b) This section does not prevent the filing or defense of an action in the small
10 claims court division by (1) a trustee in bankruptcy in the exercise of the trustee's
11 duties as trustee, or (2) by the holder of a security agreement, retail installment
12 contract, or lien contract subject to the Unruh Act (Chapter 1 (commencing with
13 Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code) or the
14 Automobile Sales Finance Act (Chapter 2b (commencing with Section 2981) of
15 Title 14 of Part 4 of Division 3 of the Civil Code), purchased by the holder for the
16 holder's portfolio of investments, provided that the holder is not an assignee for
17 the purpose of collection.

18 (c) This section does not prevent the filing in a small claims court division by a
19 local government which is self-insured for purposes of workers' compensation and
20 is seeking subrogation pursuant to Section 3852 of the Labor Code.

21 **Comment.** Section 116.420 is amended to correct references to the small claims court, which
22 are colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

23 **Code Civ. Proc. § 116.531 (technical amendment). Experts**

24 SEC. _____. Section 116.531 of the Code of Civil Procedure is amended to read:
25 116.531. Nothing in this article shall prevent a representative of an insurer or
26 other expert in the matter before the small claims court division from rendering
27 assistance to a party in the litigation except during the conduct of the hearing,
28 either before or after the commencement of the action, unless otherwise prohibited
29 by law; nor shall anything in this article prevent those individuals from testifying
30 to facts of which they have personal knowledge and about which they are
31 competent to testify.

32 **Comment.** Section 116.531 is amended to correct the reference to the small claims court,
33 which is colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

34 **Code Civ. Proc. § 116.540 (technical amendment). Who may appear**

35 SEC. _____. Section 116.540 of the Code of Civil Procedure is amended to read:
36 116.540. (a) Except as permitted by this section, no individual other than the
37 plaintiff and the defendant may take part in the conduct or defense of a small
38 claims action.

39 (b) A corporation may appear and participate in a small claims action only
40 through a regular employee, or a duly appointed or elected officer or director, who

1 is employed, appointed, or elected for purposes other than solely representing the
2 corporation in the small claims court division.

3 (c) A party who is not a corporation or a natural person may appear and
4 participate in a small claims action only through a regular employee, or a duly
5 appointed or elected officer or director, or in the case of a partnership, a partner,
6 engaged for purposes other than solely representing the party in the small claims
7 court division.

8 (d) If a party is an individual doing business as a sole proprietorship, the party
9 may appear and participate in a small claims action by a representative and
10 without personally appearing if both of the following conditions are met:

11 (1) The claim can be proved or disputed by evidence of an account that
12 constitutes a business record as defined in Section 1271 of the Evidence Code, and
13 there is no other issue of fact in the case.

14 (2) The representative is a regular employee of the party for purposes other than
15 solely representing the party in small claims actions and is qualified to testify to
16 the identity and mode of preparation of the business record.

17 (e) A plaintiff is not required to personally appear, and may submit declarations
18 to serve as evidence supporting his or her claim or allow another individual to
19 appear and participate on his or her behalf, if (1) the plaintiff is serving on active
20 duty in the United States armed forces outside this state, (2) the plaintiff was
21 assigned to his or her duty station after his or her claim arose, (3) the assignment is
22 for more than six months, (4) the representative is serving without compensation,
23 and (5) the representative has appeared in small claims actions on behalf of others
24 no more than four times during the calendar year. The defendant may file a claim
25 in the same action in an amount not to exceed the jurisdictional limits stated in
26 Sections 116.220 and 116.231.

27 (f) A party incarcerated in a county jail, a Department of Corrections facility, or
28 a Youth Authority facility is not required to personally appear, and may submit
29 declarations to serve as evidence supporting his or her claim, or may authorize
30 another individual to appear and participate on his or her behalf if that individual is
31 serving without compensation and has appeared in small claims actions on behalf
32 of others no more than four times during the calendar year.

33 (g) A defendant who is a nonresident owner of real property may defend against
34 a claim relating to that property without personally appearing by (1) submitting
35 written declarations to serve as evidence supporting his or her defense, (2)
36 allowing another individual to appear and participate on his or her behalf if that
37 individual is serving without compensation and has appeared in small claims
38 actions on behalf of others no more than four times during the calendar year, or (3)
39 taking the action described in both (1) and (2).

40 (h) A party who is an owner of rental real property may appear and participate in
41 a small claims action through a property agent under contract with the owner to
42 manage the rental of that property, if (1) the owner has retained the property agent
43 principally to manage the rental of that property and not principally to represent

1 the owner in the small claims court division, and (2) the claim relates to the rental
2 property.

3 (i) At the hearing of a small claims action, the court shall require any individual
4 who is appearing as a representative of a party under subdivisions (b) to (h),
5 inclusive, to file a declaration stating (1) that the individual is authorized to appear
6 for the party, and (2) the basis for that authorization. If the representative is
7 appearing under subdivision (b), (c), (d), or (h), the declaration also shall state that
8 the individual is not employed solely to represent the party in the small claims
9 court division. If the representative is appearing under subdivision (e), (f), or (g),
10 the declaration also shall state that the representative is serving without
11 compensation, and has appeared in small claims actions on behalf of others no
12 more than four times during the calendar year.

13 (j) A husband or wife who sues or who is sued with his or her spouse may
14 appear and participate on behalf of his or her spouse if (1) the claim is a joint
15 claim, (2) the represented spouse has given his or her consent, and (3) the court
16 determines that the interests of justice would be served.

17 (k) If the court determines that a party cannot properly present his or her claim
18 or defense and needs assistance, the court may in its discretion allow another
19 individual to assist that party.

20 (l) Nothing in this section shall operate or be construed to authorize an attorney
21 to participate in a small claims action except as expressly provided in Section
22 116.530.

23 **Comment.** Section 116.540 is amended to correct references to the small claims court, which
24 are colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

25 **Code Civ. Proc. § 116.541 (technical amendment). Department of Corrections and**
26 **Department of the Youth Authority**

27 SEC. _____. Section 116.541 of the Code of Civil Procedure is amended to read:

28 116.541. (a) Notwithstanding Section 116.540 or any other provision of law, the
29 Department of Corrections or the Department of the Youth Authority may appear
30 and participate in a small claims action through a regular employee, who is
31 employed or appointed for purposes other than solely representing that department
32 in the small claims court division.

33 (b) Where the Department of Corrections or the Department of the Youth
34 Authority is named as a defendant in the small claims court division, the
35 representative of the department is not required to personally appear to challenge
36 the plaintiff's compliance with the pleading requirements and may submit
37 pleadings or declarations to assert that challenge.

38 (c) At the hearing of a small claims action, the court shall require any individual
39 who is appearing as a representative of the Department of Corrections or the
40 Department of the Youth Authority under subdivision (a) to file a declaration
41 stating (1) that the individual is authorized to appear for the party, (2) the basis for

1 that authorization, and (3) that the individual is not employed solely to represent
2 the party in the small claims court division.

3 (d) Nothing in this section shall operate or be construed to authorize an attorney
4 to participate in a small claims action except as expressly provided in Section
5 116.530.

6 (e) For purposes of this section, all references to the Department of Corrections
7 or the Department of the Youth Authority include an employee thereof against
8 whom a claim has been filed under this chapter arising out of his or her duties as
9 an employee of that department.

10 **Comment.** Section 116.541 is amended to correct references to the small claims court, which
11 are colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

12 **Code Civ. Proc. § 116.550 (technical amendment). Interpreters**

13 SEC. _____. Section 116.550 of the Code of Civil Procedure is amended to read:

14 116.550. (a) If the court determines that a party does not speak or understand
15 English sufficiently to comprehend the proceedings or give testimony, and needs
16 assistance in so doing, the court may permit another individual (other than an
17 attorney) to assist that party.

18 (b) Each small claims court division shall make a reasonable effort to maintain
19 and make available to the parties a list of interpreters who are able and willing to
20 aid parties in small claims actions either for no fee, or for a fee which is reasonable
21 considering the nature and complexity of the claims. The list shall include
22 interpreters for all languages that require interpretation before the court, as
23 determined by the court in its discretion and in view of the court's experience.

24 (c) Failure to maintain a list of interpreters, or failure to include an interpreter for
25 a particular language, shall not invalidate any proceedings before the court.

26 (d) If a court interpreter or other competent interpreter is not available to aid a
27 party in a small claims action, at the first hearing of the case the court shall
28 postpone the hearing one time only to allow the party the opportunity to obtain
29 another individual (other than an attorney) to assist that party. Any additional
30 continuances shall be at the discretion of the court.

31 **Comment.** Section 116.550 is amended to correct the reference to the small claims court,
32 which is colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

33 **Code Civ. Proc. § 116.610 (technical amendment). Judgment**

34 SEC. _____. Section 116.610 of the Code of Civil Procedure is amended to read:

35 116.610. (a) The small claims court division shall give judgment for damages, or
36 equitable relief, or both damages and equitable relief, within the jurisdictional
37 limits stated in Sections 116.220 and 116.231, and may make such orders as to
38 time of payment or otherwise as the court deems just and equitable for the
39 resolution of the dispute.

40 (b) The court may, at its discretion or on request of any party, continue the
41 matter to a later date in order to permit and encourage the parties to attempt
42 resolution by informal or alternative means.

1 (c) The judgment shall include a determination whether the judgment resulted
2 from a motor vehicle accident on a California highway caused by the defendant's
3 operation of a motor vehicle, or by the operation by some other individual, of a
4 motor vehicle registered in the defendant's name.

5 (d) If the defendant has filed a claim against the plaintiff, or if the judgment is
6 against two or more defendants, the judgment, and the statement of decision if one
7 is rendered, shall specify the basis for and the character and amount of the liability
8 of each of the parties, including, in the case of multiple judgment debtors, whether
9 the liability of each is joint or several.

10 (e) If specific property is referred to in the judgment, whether it be personal or
11 real, tangible or intangible, the property shall be identified with sufficient detail to
12 permit efficient implementation or enforcement of the judgment.

13 (f) In an action against several defendants, the court may, in its discretion, render
14 judgment against one or more of them, leaving the action to proceed against the
15 others, whenever a several judgment is proper.

16 (g) The prevailing party is entitled to the costs of the action, including the costs
17 of serving the order for the appearance of the defendant.

18 (h) When the court renders judgment, the clerk shall promptly deliver or mail
19 notice of entry of the judgment to the parties, and shall execute a certificate of
20 personal delivery or mailing and place it in the file.

21 (i) The notice of entry of judgment shall be on a form approved or adopted by
22 the Judicial Council.

23 **Comment.** Section 116.610 is amended to correct the reference to the small claims court,
24 which is colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

25 **Code Civ. Proc. § 116.720 (technical amendment). Failure of plaintiff to appear at hearing**

26 SEC. _____. Section 116.720 of the Code of Civil Procedure is amended to read:

27 116.720. (a) A plaintiff who did not appear at the hearing in the small claims
28 ~~court~~ division may file a motion to vacate the judgment with the clerk of the small
29 claims ~~court~~ division. The motion shall be filed within 30 days after the clerk has
30 mailed notice of entry of the judgment to the parties.

31 (b) The clerk shall schedule the hearing on the motion to vacate for a date no
32 earlier than 10 days after the clerk has mailed written notice of the date, time, and
33 place of the hearing to the parties.

34 (c) Upon a showing of good cause, the small claims ~~court~~ division may grant the
35 motion. If the defendant is not present, the court shall hear the motion in the
36 defendant's absence.

37 (d) If the motion is granted, and if all parties are present and agree, the court may
38 hear the case without rescheduling it. If the defendant is not present, the judge or
39 clerk shall reschedule the case and give notice in accordance with Section 116.330.

40 **Comment.** Section 116.720 is amended to correct references to the small claims court, which
41 are colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

1 **Code Civ. Proc. § 116.730 (technical amendment). Failure of defendant to appear at hearing**

2 SEC. _____. Section 116.730 of the Code of Civil Procedure is amended to read:

3 116.730. (a) A defendant who did not appear at the hearing in the small claims
4 court division may file a motion to vacate the judgment with the clerk of the small
5 claims court division. The motion shall be filed within 30 days after the clerk has
6 mailed notice of entry of the judgment to the parties.

7 (b) The defendant shall appear at any hearing on the motion, or submit written
8 justification for not appearing together with a declaration in support of the motion.

9 (c) Upon a showing of good cause, the court may grant the motion to vacate the
10 judgment. If the plaintiff is not present, the court shall hear the motion in the
11 plaintiff's absence.

12 (d) If the motion is granted, and if all parties are present and agree, the court may
13 hear the case without rescheduling it. If the plaintiff is not present, the judge or
14 clerk shall reschedule the case and give notice in accordance with Section 116.330.

15 (e) If the motion is denied, the defendant may appeal to the superior court only
16 on the denial of the motion to vacate the judgment. The defendant shall file the
17 notice of appeal with the clerk of the small claims court division within 10 days
18 after the small claims court division has mailed or delivered notice of the court's
19 denial of the motion to vacate the judgment.

20 (f) If the superior court determines that the defendant's motion to vacate the
21 judgment should have been granted, the superior court may hear the claims of all
22 parties without rescheduling the matter, provided that all parties are present and
23 the defendant has previously complied with this article, or may order the case
24 transferred to the small claims court division for a hearing.

25 **Comment.** Section 116.730 is amended to correct references to the small claims court, which
26 are colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

27 **Code Civ. Proc. § 116.740 (technical amendment). Defective service on defendant**

28 SEC. _____. Section 116.740 of the Code of Civil Procedure is amended to read:

29 116.740. (a) If the defendant was not properly served as required by Section
30 116.330 or 116.340 and did not appear at the hearing in the small claims court
31 division, the defendant may file a motion to vacate the judgment with the clerk of
32 the small claims court division. The motion shall be accompanied by a supporting
33 declaration, and shall be filed within 180 days after the defendant discovers or
34 should have discovered that judgment was entered against the defendant.

35 (b) The court may order that the enforcement of the judgment shall be suspended
36 pending a hearing and determination of the motion to vacate the judgment.

37 (c) Upon a showing of good cause, the court may grant the motion to vacate the
38 judgment. If the plaintiff is not present, the court shall hear the motion in the
39 plaintiff's absence.

40 (d) Subdivisions (d), (e), and (f) of Section 116.730 apply to any motion to
41 vacate a judgment.

1 **Comment.** Section 116.740 is amended to correct references to the small claims court, which
2 are colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

3 **Code Civ. Proc. § 116.750 (technical amendment). Notice of appeal**

4 SEC. _____. Section 116.750 of the Code of Civil Procedure is amended to read:
5 116.750. (a) An appeal from a judgment in a small claims action is taken by
6 filing a notice of appeal with the clerk of the small claims ~~court~~ division.

7 (b) A notice of appeal shall be filed not later than 30 days after the clerk has
8 delivered or mailed notice of entry of the judgment to the parties. A notice of
9 appeal filed after the 30-day period is ineffective for any purpose.

10 (c) The time for filing a notice of appeal is not extended by the filing of a request
11 to correct a mistake or by virtue of any subsequent proceedings on that request,
12 except that a new period for filing notice of appeal shall begin on the delivery or
13 mailing of notice of entry of any modified judgment.

14 **Comment.** Section 116.750 is amended to correct the reference to the small claims court,
15 which is colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

16
17 **Code Civ. Proc. § 116.780 (technical amendment). Judgment on appeal**

18 SEC. _____. Section 116.780 of the Code of Civil Procedure is amended to read:
19 116.780. (a) The judgment of the superior court after a hearing on appeal is final
20 and not appealable.

21 (b) Article 6 (commencing with Section 116.610) on judgments of the small
22 claims ~~court~~ division applies to judgments of the superior court after a hearing on
23 appeal, except as provided in subdivisions (c) and (d).

24 (c) For good cause and where necessary to achieve substantial justice between
25 the parties, the superior court may award a party to an appeal reimbursement of (1)
26 attorney's fees actually and reasonably incurred in connection with the appeal, not
27 exceeding one hundred fifty dollars (\$150), and (2) actual loss of earnings and
28 expenses of transportation and lodging actually and reasonably incurred in
29 connection with the appeal, not exceeding one hundred fifty dollars (\$150).

30 (d) Upon the expiration of 10 days following the completion of the appeal
31 process, the superior court shall order the appeal and any judgment transferred to
32 the small claims ~~court~~ division in which the action was originally filed for
33 purposes of enforcement and other proceedings under Article 8 (commencing with
34 Section 116.810) of this chapter.

35 **Comment.** Section 116.780 is amended to correct references to the small claims court, which
36 are colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

37 **Code Civ. Proc. § 116.795 (technical amendment). Failure to appear or delayed hearing**

38 SEC. _____. Section 116.795 of the Code of Civil Procedure is amended to read:
39 116.795. (a) The superior court may dismiss the appeal if the appealing party
40 does not appear at the hearing or if the appeal is not heard within one year from
41 the date of filing the notice of appeal with the clerk of the small claims ~~court~~
42 division.

1 (b) Upon dismissal of an appeal by the superior court, the small claims court
2 division shall thereafter have the same jurisdiction as if no appeal had been filed.

3 **Comment.** Section 116.795 is amended to correct references to the small claims court, which
4 are colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

5 **Code Civ. Proc. § 116.810 (technical amendment). Suspension of enforcement during time**
6 **for appeal**

7 SEC. _____. Section 116.810 of the Code of Civil Procedure is amended to read:
8 116.810. (a) Enforcement of the judgment of a small claims court division,
9 including the issuance or recording of any abstract of the judgment, is
10 automatically suspended, without the filing of a bond by the defendant, until the
11 expiration of the time for appeal.

12 (b) If an appeal is filed as provided in Article 7 (commencing with Section
13 116.710), enforcement of the judgment of the small claims court division is
14 suspended unless (1) the appeal is dismissed by the superior court pursuant to
15 Section 116.795, or (2) the superior court determines that the small claims court
16 division properly denied the defendant's motion to vacate filed under Section
17 116.730 or 116.740. In either of those events, the judgment of the small claims
18 court division may be enforced.

19 (c) The scope of the suspension of enforcement under this section and, unless
20 otherwise ordered, of any suspension of enforcement ordered by the court, shall
21 include any enforcement procedure described in Title 9 (commencing with Section
22 680.010) of Part 2 and in Sections 674 and 1174.

23 **Comment.** Section 116.810 is amended to correct references to the small claims court, which
24 are colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

25 **Code Civ. Proc. § 116.820 (technical amendment). Enforcement of judgment**

26 SEC. _____. Section 116.820 of the Code of Civil Procedure is amended to read:
27 116.820. (a) The judgment of a small claims court division may be enforced as
28 provided in Title 9 (commencing with Section 680.010) of Part 2 and in Sections
29 674 and 1174 on the enforcement of judgments of other courts. A judgment of the
30 superior court after a hearing on appeal, and after transfer to the small claims court
31 division under subdivision (d) of Section 116.780, may be enforced like other
32 judgments of the small claims court division, as provided in Title 9 (commencing
33 with Section 680.010) of Part 2 and in Sections 674 and 1174 on the enforcement
34 of judgments of other courts.

35 (b) Fees as provided in Sections 26828, 26830, and 26834 of the Government
36 Code shall be charged and collected by the clerk for the issuance of a writ of
37 execution, an order of examination of a judgment debtor, or an abstract of
38 judgment.

39 (c) The prevailing party in any action subject to this chapter is entitled to the
40 costs of enforcing the judgment and accrued interest.

41 **Comment.** Section 116.820 is amended to correct references to the small claims court, which
42 are colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

1 **Code Civ. Proc. § 116.840 (technical amendment). Payment to judgment creditor or court**

2 SEC. _____. Section 116.840 of the Code of Civil Procedure is amended to read:

3 116.840. (a) At the option of the judgment debtor, payment of the judgment may
4 be made either (1) to the judgment creditor in accordance with Section 116.850, or
5 (2) to the court in which the judgment was entered in accordance with Section
6 116.860.

7 (b) The small claims ~~court~~ division may order entry of satisfaction of judgment
8 in accordance with subdivisions (c) and (d) of Section 116.850, or subdivision (b)
9 of Section 116.860.

10 **Comment.** Section 116.840 is amended to correct the reference to the small claims court,
11 which is colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

12 **Code Civ. Proc. § 116.930 (technical amendment). Information on rules and procedures**

13 SEC. _____. Section 116.930 of the Code of Civil Procedure is amended to read:

14 116.930. (a) Each small claims division shall provide in each courtroom in
15 which small claims actions are heard a current copy of a publication describing
16 small claims ~~court~~ division law and the procedures that are applicable in the small
17 claims ~~courts~~ divisions, including the law and procedures that apply to the
18 enforcement of judgments. The Small Claims Court and Consumer Law California
19 Judge’s Bench Book developed by the California Center for Judicial Education
20 and Research is illustrative of a publication that satisfies the requirement of this
21 subdivision.

22 (b) Each small claims division may formulate and distribute to litigants and the
23 public a manual on small claims ~~court~~ division rules and procedures. The manual
24 shall explain how to complete the necessary forms, how to determine the proper
25 court in which small claims actions may be filed, how to present and defend
26 against claims, how to appeal, how to enforce a judgment, how to protect property
27 that is exempt from execution, and such other matters that the court deems
28 necessary or desirable.

29 (c) If the Department of Consumer Affairs determines there are sufficient private
30 or public funds available in addition to the funds available within the department’s
31 current budget, the department, in cooperation with the Judicial Council, shall
32 prepare a manual or information booklet on small claims ~~court~~ division rules and
33 procedures. The department shall distribute copies to the general public and to
34 each small claims division.

35 (d) If funding is available, the Judicial Council, in cooperation with the
36 Department of Consumer Affairs, shall prepare and distribute to each judge who
37 sits in a small claims ~~court~~ division a bench book describing all state and federal
38 consumer protection laws reasonably likely to apply in small claims actions.

39 **Comment.** Section 116.930 is amended to correct references to the small claims court, which
40 are colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

41 **Code Civ. Proc. § 134 (technical amendment). Court closure on judicial holidays**

42 SEC. _____. Section 134 of the Code of Civil Procedure is amended to read:

1 134. (a) Except as provided in subdivision (c), the courts shall be closed for the
2 transaction of judicial business on judicial holidays for all but the following
3 purposes:

4 (1) To give, upon their request, instructions to a jury when deliberating on their
5 verdict.

6 (2) To receive a verdict or discharge a jury.

7 (3) For the conduct of arraignments and the exercise of the powers of a
8 magistrate in a criminal action, or in a proceeding of a criminal nature.

9 (4) For the conduct of Saturday small claims ~~court~~ division sessions pursuant to
10 the Small Claims Act set forth in Chapter 5.5 (commencing with Section 116.110).

11 (b) Injunctions and writs of prohibition may be issued and served on any day.

12 (c) In any superior, ~~municipal, or justice~~ or municipal court, one or more
13 departments of the court may remain open and in session for the transaction of any
14 business which may come before the department in the exercise of the civil or
15 criminal jurisdiction of the court, or both, on a judicial holiday or at any hours of
16 the day or night, or both, as the judges of the court prescribe.

17 (d) The fact that a court is open on a judicial holiday shall not make that day a
18 nonholiday for purposes of computing the time required for the conduct of any
19 proceeding nor for the performance of any act. Any paper lodged with the court at
20 a time when the court is open pursuant to subdivision (c), shall be filed by the
21 court on the next day which is not a judicial holiday, if the document meets
22 appropriate criteria for filing.

23 **Comment.** Section 134 is amended to reflect the elimination of the justice court. Cal. Const.
24 art. VI, §§ 1, 5(b). The amendment also corrects the reference to the small claims court, which is
25 colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

26 **Code Civ. Proc. § 391 (technical amendment). Definitions**

27 SEC. _____. Section 391 of the Code of Civil Procedure is amended to read:

28 391. As used in this title, the following terms have the following meanings:

29 (a) “Litigation” means any civil action or proceeding, commenced, maintained
30 or pending in any state or federal court.

31 (b) “Vexatious litigant” means a person who does any of the following:

32 (1) In the immediately preceding seven-year period has commenced, prosecuted,
33 or maintained in propria persona at least five litigations other than in a small
34 claims ~~court~~ division that have been (i) finally determined adversely to the person
35 or (ii) unjustifiably permitted to remain pending at least two years without having
36 been brought to trial or hearing.

37 (2) After a litigation has been finally determined against the person, repeatedly
38 relitigates or attempts to relitigate, in propria persona, either (i) the validity of the
39 determination against the same defendant or defendants as to whom the litigation
40 was finally determined or (ii) the cause of action, claim, controversy, or any of the
41 issues of fact or law, determined or concluded by the final determination against
42 the same defendant or defendants as to whom the litigation was finally determined.

1 (3) In any litigation while acting in propria persona, repeatedly files
2 unmeritorious motions, pleadings, or other papers, conducts unnecessary
3 discovery, or engages in other tactics that are frivolous or solely intended to cause
4 unnecessary delay.

5 (4) Has previously been declared to be a vexatious litigant by any state or federal
6 court of record in any action or proceeding based upon the same or substantially
7 similar facts, transaction, or occurrence.

8 (c) “Security” means an undertaking to assure payment, to the party for whose
9 benefit the undertaking is required to be furnished, of the party’s reasonable
10 expenses, including attorney’s fees and not limited to taxable costs, incurred in or
11 in connection with a litigation instituted, caused to be instituted, or maintained or
12 caused to be maintained by a vexatious litigant.

13 (d) “Plaintiff” means the person who commences, institutes or maintains a
14 litigation or causes it to be commenced, instituted or maintained, including an
15 attorney at law acting in propria persona.

16 (e) “Defendant” means a person (including corporation, association, partnership
17 and firm or governmental entity) against whom a litigation is brought or
18 maintained or sought to be brought or maintained.

19 **Comment.** Section 391 is amended to correct the reference to the small claims court, which is
20 colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

21 **Code Civ. Proc. § 426.60 (technical amendment). Application of article**

22 SEC. _____. Section 426.60 of the Code of Civil Procedure is amended to read:

23 426.60. (a) This article applies only to civil actions and does not apply to special
24 proceedings.

25 (b) This article does not apply to actions in the small claims court division.

26 (c) This article does not apply where the only relief sought is a declaration of the
27 rights and duties of the respective parties in an action for declaratory relief under
28 Chapter 8 (commencing with Section 1060) of Title 14 of this part.

29 **Comment.** Section 426.60 is amended to correct the reference to the small claims court, which
30 is colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

31 **Code Civ. Proc. § 1029.6 (technical amendment). Complaint for damages against medical**
32 **professionals or hospital**

33 SEC. _____. Section 1029.6 of the Code of Civil Procedure is amended to read:

34 1029.6. (a) Whenever a complaint for damages for personal injuries is filed
35 against a physician and surgeon, dentist, registered nurse, dispensing optician,
36 optometrist, pharmacist, registered physical therapist, podiatrist, licensed
37 psychologist, osteopathic physician and surgeon, chiropractor, clinical laboratory
38 bioanalyst, clinical laboratory technologist, or veterinarian, duly licensed as such
39 under the laws of this state, or a licensed hospital as the employer of any such
40 person, in an action for error, omission, or negligence in the performance of
41 professional services, or performance of professional services without consent, any
42 such defendant may, within six months after service of summons, move the court

1 for an order, upon notice to plaintiff and all defendants having appeared in the
2 action, and hearing, requiring the plaintiff to file an undertaking in a sum not to
3 exceed five hundred dollars (\$500) as security for the costs of defense as provided
4 in subdivision (d), which may be awarded against the plaintiff. The motion shall
5 be supported by affidavit showing that the claim against the defendant is frivolous.
6 Any defendant having appeared in the action and within 30 days after receipt of
7 notice may join with the moving party requesting an order under this section as to
8 the additional defendant. The failure of any defendant to join with the moving
9 party shall preclude that defendant from subsequently requesting an order under
10 this section.

11 At the hearing upon the motion, the court shall order the plaintiff to file the
12 undertaking if the defendant shows to the satisfaction of the court that: (i) the
13 plaintiff would not suffer undue economic hardship in filing the undertaking and
14 (ii) there is no reasonable possibility that the plaintiff has a cause of action against
15 each named defendant with respect to whom the plaintiff would otherwise be
16 required to file the undertaking.

17 A determination by the court that an undertaking either shall or shall not be filed
18 or shall be filed as to one or more defendants and not as to others, shall not be
19 deemed a determination of any one or more issues in the action or of the merits
20 thereof. If the court, upon any such motion, makes a determination that an
21 undertaking be filed by the plaintiff as to any one or more defendants, the action
22 shall be dismissed as to that defendant or defendants, unless the undertaking
23 required by the court shall have been filed within the reasonable time as may be
24 fixed by the court.

25 (b) This section does not apply to a complaint in an action commenced in a small
26 claims court division.

27 (c) Whenever more than one defendant is named, the undertaking shall be
28 increased to the extent of not to exceed five hundred dollars (\$500) for each
29 additional defendant in whose favor the undertaking is ordered, not to exceed the
30 total of one thousand dollars (\$1,000).

31 (d) In any action requiring an undertaking as provided in this section, upon the
32 dismissal of the action or the award of judgment to the defendant, the court shall
33 require the plaintiff to pay the defendant's court costs. Any sureties shall be liable
34 for those costs in an amount not to exceed the sum of five hundred dollars (\$500)
35 or the amount of the undertaking, whichever is lesser, for each defendant with
36 respect to whom the sureties have executed an undertaking. If the plaintiff prevails
37 in the action against any defendant with respect to whom an undertaking has been
38 filed, the defendant shall pay the costs to plaintiff incurred in defending the motion
39 for dismissal authorized by this section.

40 (e) Any defendant filing a motion under this section or joining with a moving
41 party under this section is precluded from subsequently filing a motion for
42 summary judgment.

1 (f) Any defendant filing a motion for summary judgment is precluded from
2 subsequently filing a motion, or joining with a moving party, under this section.

3 **Comment.** Section 1029.6 is amended to correct the reference to the small claims court, which
4 is colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

5 **Code Civ. Proc. § 1141.11 (amended). Arbitration of at-issue civil actions**

6 SEC. _____. Section 1141.11 of the Code of Civil Procedure is amended to read:

7 1141.1. (a) In each superior court with 10 or more judges, all at-issue civil
8 actions pending on or filed after the operative date of this chapter shall be
9 submitted to arbitration, by the presiding judge or the judge designated, under this
10 chapter if the amount in controversy in the opinion of the court will not exceed
11 fifty thousand dollars (\$50,000) for each plaintiff, which decision shall not be
12 appealable.

13 (b) In each superior court with less than 10 judges, the court may provide by
14 local rule, when it determines that it is in the best interests of justice, that all at-
15 issue civil actions pending on or filed after the operative date of this chapter, shall
16 be submitted to arbitration by the presiding judge or the judge designated under
17 this chapter if the amount in controversy in the opinion of the court will not exceed
18 fifty thousand dollars (\$50,000) for each plaintiff, which decision shall not be
19 appealable.

20 (c) In each municipal court district, the municipal court district may provide by
21 local rule, when it is determined to be in the best interests of justice, that all at-
22 issue civil actions pending on or filed after the operative date of this chapter in
23 such judicial district, shall be submitted to arbitration by the presiding judge or the
24 judge designated under this chapter. This section does not apply to any action in
25 the small claims court division, or to any action maintained pursuant to Section
26 1781 of the Civil Code or Section 1161 of this code.

27 (d) In each municipal court district which has adopted judicial arbitration
28 pursuant to subdivision (c), all civil actions pending on or after July 1, 1990,
29 which involve a claim for money damages against a single defendant as a result of
30 a motor vehicle collision, except those heard in the small claims division, shall be
31 submitted to arbitration within 120 days of the filing of the defendant's answer to
32 the complaint (except as may be extended by the court for good cause) before an
33 arbitrator selected by the court, subject to disqualification for cause as specified in
34 Sections 170.1 and 170.6.

35 The court may provide by local rule for the voluntary or mandatory use of case
36 questionnaires, established under Section 93, in any proceeding subject to these
37 provisions. Where local rules provide for the use of case questionnaires, the
38 questionnaires shall be exchanged by the parties upon the defendant's answer and
39 completed and returned within 60 days.

40 For the purposes of this subdivision, the term "single defendant" means (1) an
41 individual defendant, whether a person or an entity, (2) two or more persons
42 covered by the same insurance policy applicable to the motor vehicle collision, or

1 (3) two or more persons residing in the same household when no insurance policy
2 exists that is applicable to the motor vehicle collision. The naming of one or more
3 cross-defendants, not a plaintiff, shall constitute a multiple-defendant case not
4 subject to the provisions of this subdivision.

5 ~~(e) The provisions of this chapter shall not apply to those actions filed in a~~
6 ~~superior or municipal court which has been selected pursuant to Section 1823.1~~
7 ~~and is participating in a pilot project pursuant to Title 1 (commencing with Section~~
8 ~~1823) of Part 3.5; provided, however, that any superior or municipal court may~~
9 ~~provide by local rule that the provisions of this chapter shall apply to actions~~
10 ~~pending on or filed after July 1, 1979. Any action filed in such court after the~~
11 ~~conclusion of the pilot project shall be subject to the provisions of this chapter.~~

12 (f) ~~(e)~~ No local rule of a superior court providing for judicial arbitration may
13 dispense with the conference required pursuant to Section 1141.16.

14 **Comment.** Section 1141.11 is amended to make technical changes, including correction of the
15 reference to the small claims court, which is colloquially acceptable but technically incorrect. See
16 Section 116.210 & Comment. Subdivision (e) is deleted as obsolete.

17  **Staff Note.** The amendment would delete subdivision (e), because it refers to a pilot project
18 that no longer exists. See former Sections 1823-1826.14.

19 **Code Civ. Proc. § 1995 (technical amendment). Prisoner as witness**

20 SEC. _____. Section 1995 of the Code of Civil Procedure is amended to read:

21 1995. If the witness be a prisoner, confined in a jail within this state, an order for
22 his examination of the prisoner in the jail upon deposition, or for his temporary
23 removal and production of the prisoner before a court or officer may be made as
24 follows:

25 1. By the court itself in which the action or special proceeding is pending, unless
26 it be a small claims court is a small claims division .

27 2. By a justice of the Supreme Court, or a judge of the superior court of the
28 county where the action or proceeding is pending, if pending before a small claims
29 court division, or before a judge or other person out of court.

30 **Comment.** Section 1995 is amended to make technical changes, including correction of
31 references to the small claims court, which are colloquially acceptable but technically incorrect.
32 See Section 116.210 & Comment.

1 CHANGES REFLECTING ELIMINATION OF THE JUSTICE COURT

2 **Heading of Chapter 5 (commencing with Section 81) (technical amendment)**

3 SEC ___. The heading of Chapter 5 (commencing with Section 81) of Title 1 of
4 Part 1 of the Code of Civil Procedure is amended to read:

5 CHAPTER 5. MUNICIPAL COURTS AND JUSTICE COURTS

6 **Comment.** The heading “Chapter 5. Municipal Courts and Justice Courts” is amended to
7 reflect the elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

8 **Code Civ. Proc. § 82 (technical amendment). Effect of establishing municipal court**

9 SEC. _____. Section 82 of the Code of Civil Procedure is amended to read:

10 82. The establishment of a municipal court, ~~or justice court~~, in a county, or city
11 and county, or the determination of the jurisdiction of such ~~courts~~ a municipal
12 court by the Legislature, shall not affect, alter or diminish the previously existing
13 jurisdiction of the superior court of any county, or city and county, other than that
14 of the county, or city and county, wherein such municipal ~~or justice~~ court is
15 established.

16 **Comment.** Section 82 is amended to reflect the elimination of the justice court. Cal. Const. art.
17 VI, §§ 1, 5(b).

18 **Code Civ. Proc. § 83 (repealed). Concurrent jurisdiction**

19 SEC. _____. Section 83 of the Code of Civil Procedure is repealed.

20 ~~83. The jurisdiction of municipal and justice courts is the same and concurrent.~~

21 **Comment.** Section 83 is repealed to reflect the elimination of the justice court. Cal. Const. art.
22 VI, §§ 1, 5(b).

23 **Code Civ. Proc. § 84 (amended). Process**

24 SEC. _____. Section 84 of the Code of Civil Procedure is amended to read:

25 84. The process of municipal courts ~~and justice courts~~ shall extend throughout
26 the State.

27 **Comment.** Section 84 is amended to reflect the elimination of the justice court. Cal. Const. art.
28 VI, §§ 1, 5(b).

29 **Code Civ. Proc. § 88 (repealed). Clerks of justice courts**

30 SEC. _____. Section 88 of the Code of Civil Procedure is repealed.

31 ~~88. Clerks of justice courts, in addition to the other powers conferred upon them~~
32 ~~by law, shall have power to administer and certify oaths to affidavits, and all~~
33 ~~papers, documents or instruments used in, or in connection with, the civil actions~~
34 ~~or proceedings in such justice courts and to issue summons and other writs and~~
35 ~~notices in civil actions in said courts in the name of the judge before whom the~~
36 ~~same is pending or out of whose court the same is issued.~~

1 **Comment.** Section 88 is repealed to reflect the elimination of the justice court. Cal. Const. art.
2 VI, §§ 1, 5(b).

3 **Code Civ. Proc. § 89 (repealed). Issuance of papers in blank**

4 SEC. _____. Section 87 of the Code of Civil Procedure is repealed.

5 ~~89. The summons, execution, and every other paper made or issued by a judge of~~
6 ~~a justice court, except a subpoena, must be issued without a blank left to be filled~~
7 ~~by another, otherwise it is void.~~

8 **Comment.** Section 89 is repealed to reflect the elimination of the justice court. Cal. Const. art.
9 VI, §§ 1, 5(b).

10 **Code Civ. Proc. § 134 (technical amendment). Court closure on judicial holidays**

11 SEC. _____. Section 134 of the Code of Civil Procedure is amended to read:

12 134. (a) Except as provided in subdivision (c), the courts shall be closed for the
13 transaction of judicial business on judicial holidays for all but the following
14 purposes:

15 (1) To give, upon their request, instructions to a jury when deliberating on their
16 verdict.

17 (2) To receive a verdict or discharge a jury.

18 (3) For the conduct of arraignments and the exercise of the powers of a
19 magistrate in a criminal action, or in a proceeding of a criminal nature.

20 (4) For the conduct of Saturday small claims court division sessions pursuant to
21 the Small Claims Act set forth in Chapter 5.5 (commencing with Section 116.110).

22 (b) Injunctions and writs of prohibition may be issued and served on any day.

23 (c) In any superior, ~~municipal, or justice~~ or municipal court, one or more
24 departments of the court may remain open and in session for the transaction of any
25 business which may come before the department in the exercise of the civil or
26 criminal jurisdiction of the court, or both, on a judicial holiday or at any hours of
27 the day or night, or both, as the judges of the court prescribe.

28 (d) The fact that a court is open on a judicial holiday shall not make that day a
29 nonholiday for purposes of computing the time required for the conduct of any
30 proceeding nor for the performance of any act. Any paper lodged with the court at
31 a time when the court is open pursuant to subdivision (c), shall be filed by the
32 court on the next day which is not a judicial holiday, if the document meets
33 appropriate criteria for filing.

34 **Comment.** Section 134 is amended to reflect the elimination of the justice court. Cal. Const.
35 art. VI, §§ 1, 5(b). The amendment also corrects the reference to the small claims court, which is
36 colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

37 **Code Civ. Proc. § 166 (technical amendment). Judges of municipal and superior courts**

38 SEC. _____. Section 166 of the Code of Civil Procedure is amended to read:

39 166. (a) The judge or judges of the superior, ~~municipal and justice~~ and municipal
40 courts may, in chambers, in the matters within the jurisdiction of their respective
41 courts:

1 (1) Grant all orders and writs which are usually granted in the first instance upon
2 an ex parte application, and hear and dispose of those orders and writs, appoint
3 referees, require and receive inventories and accounts to be filed, order notice of
4 settlement of supplemental accounts, suspend the powers of personal
5 representatives, guardians, or conservators in the cases allowed by law, appoint
6 special administrators, grant letters of temporary guardianship or conservatorship,
7 approve or reject claims, and direct the issuance from the court of all writs and
8 process necessary in the exercise of their powers in matters of probate.

9 (2) Hear and determine all motions made pursuant to Section 657 or 663.

10 (3) Hear and determine all uncontested actions, proceedings, demurrers,
11 motions, petitions, applications, and other matters pending before the court other
12 than actions for dissolution of marriage, for legal separation, or for a judgment of
13 nullity of the marriage, and except also applications for confirmation of sale of real
14 property in probate proceedings.

15 (4) Hear and determine motions to tax costs of enforcing a judgment.

16 (5) Approve bonds and undertakings.

17 (b) A judge may, out of court, anywhere in the state, exercise all the powers and
18 perform all the functions and duties conferred upon a judge as contradistinguished
19 from the court, or which a judge may exercise or perform in chambers.

20 **Comment.** Section 166 is amended to reflect the elimination of the justice court. Cal. Const.
21 art. VI, §§ 1, 5(b).

22 **Code Civ. Proc. § 170.5 (technical amendment). Definitions**

23 SEC. _____. Section 170.5 of the Code of Civil Procedure is amended to read:

24 170.5. For the purposes of Sections 170 to 170.5, inclusive, the following
25 definitions apply:

26 (a) “Judge” means judges of the ~~justice, municipal,~~ municipal and superior
27 courts, and court commissioners and referees.

28 (b) “Financial interest” means ownership of more than a 1 percent legal or
29 equitable interest in a party, or a legal or equitable interest in a party of a fair
30 market value in excess of one thousand five hundred dollars (\$1,500), or a
31 relationship as director, advisor or other active participant in the affairs of a party,
32 except as follows:

33 (1) Ownership in a mutual or common investment fund that holds securities is
34 not a “financial interest” in those securities unless the judge participates in the
35 management of the fund.

36 (2) An office in an educational, religious, charitable, fraternal, or civic
37 organization is not a “financial interest” in securities held by the organization.

38 (3) The proprietary interest of a policyholder in a mutual insurance company, or
39 a depositor in a mutual savings association, or a similar proprietary interest, is a
40 “financial interest” in the organization only if the outcome of the proceeding could
41 substantially affect the value of the interest.

1 (c) “Officer of a public agency” does not include a Member of the Legislature or
2 a state or local agency official acting in a legislative capacity.

3 (d) The third degree of relationship shall be calculated according to the civil law
4 system.

5 (e) “Private practice of law” includes a fee for service, retainer, or salaried
6 representation of private clients or public agencies, but excludes lawyers as full-
7 time employees of public agencies or lawyers working exclusively for legal aid
8 offices, public defender offices, or similar nonprofit entities whose clientele is by
9 law restricted to the indigent.

10 (f) “Proceeding” means the action, case, cause, motion, or special proceeding to
11 be tried or heard by the judge.

12 (g) “Fiduciary” includes any executor, trustee, guardian, or administrator.

13 **Comment.** Section 170.5 is amended to reflect the elimination of the justice court. Cal. Const.
14 art. VI, §§ 1, 5(b).

15 **Code Civ. Proc. § 170.6 (technical amendment). Prejudice against party or attorney**

16 SEC. _____. Section 170.6 of the Code of Civil Procedure is amended to read:

17 170.6. (1) No judge, court commissioner, or referee of any superior, ~~municipal~~
18 ~~or justice or municipal~~ court of the State of California shall try any civil or
19 criminal action or special proceeding of any kind or character nor hear any matter
20 ~~therein~~ which involves a contested issue of law or fact when it shall be established
21 as hereinafter provided that the judge or court commissioner is prejudiced against
22 any party or attorney or the interest of any party or attorney appearing in the action
23 or proceeding.

24 (2) Any party to or any attorney appearing in any such action or proceeding may
25 establish this prejudice by an oral or written motion without notice supported by
26 affidavit or declaration under penalty of perjury or an oral statement under oath
27 that the judge, court commissioner, or referee before whom the action or
28 proceeding is pending or to whom it is assigned is prejudiced against any such
29 party or attorney or the interest of the party or attorney so that the party or attorney
30 cannot or believes that he or she cannot have a fair and impartial trial or hearing
31 before the judge, court commissioner, or referee. Where the judge, other than a
32 judge assigned to the case for all purposes, court commissioner, or referee
33 assigned to or who is scheduled to try the cause or hear the matter is known at
34 least 10 days before the date set for trial or hearing, the motion shall be made at
35 least five days before that date. If directed to the trial of a cause where there is a
36 master calendar, the motion shall be made to the judge supervising the master
37 calendar not later than the time the cause is assigned for trial. If directed to the trial
38 of a cause which has been assigned to a judge for all purposes, the motion shall be
39 made to the assigned judge or to the presiding judge by a party within 10 days
40 after notice of the all purpose assignment, or if the party has not yet appeared in
41 the action, then within 10 days after the appearance. If the court in which the
42 action is pending is authorized to have no more than one judge and the motion

1 claims that the duly elected or appointed judge of that court is prejudiced, the
2 motion shall be made before the expiration of 30 days from the date of the first
3 appearance in the action of the party who is making the motion or whose attorney
4 is making the motion. In no event shall any judge, court commissioner, or referee
5 entertain the motion if it be made after the drawing of the name of the first juror,
6 or if there be no jury, after the making of an opening statement by counsel for
7 plaintiff, or if there is no such statement, then after swearing in the first witness or
8 the giving of any evidence or after trial of the cause has otherwise commenced. If
9 the motion is directed to a hearing (other than the trial of a cause), the motion shall
10 be made not later than the commencement of the hearing. In the case of trials or
11 hearings not herein specifically provided for, the procedure herein specified shall
12 be followed as nearly as may be. The fact that a judge, court commissioner, or
13 referee has presided at or acted in connection with a pretrial conference or other
14 hearing, proceeding or motion prior to trial and not involving a determination of
15 contested fact issues relating to the merits shall not preclude the later making of
16 the motion provided for herein at the time and in the manner hereinbefore
17 provided.

18 A motion under this paragraph may be made following reversal on appeal of a
19 trial court's decision if the trial judge in the prior proceeding is assigned to
20 conduct a new trial on the matter. The motion shall be made within 60 days after
21 the party or the party's attorney has been notified of the assignment.

22 (3) If the motion is duly presented and the affidavit or declaration under penalty
23 of perjury is duly filed or such oral statement under oath is duly made, thereupon
24 and without any further act or proof, the judge supervising the master calendar, if
25 any, shall assign some other judge, court commissioner, or referee to try the cause
26 or hear the matter. In other cases, the trial of the cause or the hearing of the matter
27 shall be assigned or transferred to another judge, court commissioner, or referee of
28 the court in which the trial or matter is pending or, if there is no other judge, court
29 commissioner, or referee of the court in which the trial or matter is pending, the
30 Chairman of the Judicial Council shall assign some other judge, court
31 commissioner, or referee to try the cause or hear the matter as promptly as
32 possible. Under no circumstances shall a party or attorney be permitted to make
33 more than one such motion in any one action or special proceeding pursuant to this
34 section; and in actions or special proceedings where there may be more than one
35 plaintiff or similar party or more than one defendant or similar party appearing in
36 the action or special proceeding, only one motion for each side may be made in
37 any one action or special proceeding.

38 (4) Unless required for the convenience of the court or unless good cause is
39 shown, a continuance of the trial or hearing shall not be granted by reason of the
40 making of a motion under this section. If a continuance is granted, the cause or
41 matter shall be continued from day to day or for other limited periods upon the
42 trial or other calendar and shall be reassigned or transferred for trial or hearing as
43 promptly as possible.

1 (5) Any affidavit filed pursuant to this section shall be in substantially the
2 following form:

3
4 (Here set forth court and cause)

5
6
7 State of California,) PEREMPTORY
8) ss. CHALLENGE
9 County of)

10
11 _____, being duly sworn, deposes and says: That he or she is a party
12 (or attorney for a party) to the within action (or special proceeding). That
13 _____ the judge, court commissioner, or referee before whom the trial of
14 the (or a hearing in the) aforesaid action (or special proceeding) is pending (or to
15 whom it is assigned), is prejudiced against the party (or his or her attorney) or the
16 interest of the party (or his or her attorney) so that affiant cannot or believes that
17 he or she cannot have a fair and impartial trial or hearing before the judge, court
18 commissioner, or referee.

19
20 _____
21
22 Subscribed and sworn to before me this _____ day of _____,
23 19____.

24
25 (Clerk or notary public or other
26 officer administering oath)

27
28 (6) Any oral statement under oath or declaration under penalty of perjury made
29 pursuant to this section shall include substantially the same contents as the
30 affidavit above.

31 (7) Nothing in this section shall affect or limit the provisions of Section 170 and
32 Title 4, Part 2, of this code and this section shall be construed as cumulative
33 thereto.

34 (8) If any provision of this section or the application to any person or
35 circumstance is held invalid, that invalidity shall not affect other provisions or
36 applications of the section which can be given effect without the invalid provision
37 or application and to this end the provisions of this section are declared to be
38 severable.

39 **Comment.** Section 170.6(1) is amended to reflect the elimination of the justice court. Cal.
40 Const. art. VI, §§ 1, 5(b).

1 **Code Civ. Proc. § 179 (technical amendment). Taking and certifying acknowledgments,**
2 **affidavits or depositions**

3 SEC. _____. Section 179 of the Code of Civil Procedure is amended to read:

4 179. Each of the justices of the Supreme Court and of any court of appeal and
5 the judges of the superior courts, shall have power in any part of the state, and
6 every municipal court judge and ~~judge of a justice court~~ shall have power within
7 the county or city and county in which he the judge is elected or appointed, to take
8 and certify:

9 1. The proof and acknowledgment of a conveyance of real property, or of any
10 other written instrument.

11 2. The acknowledgment of satisfaction of a judgment of any court.

12 3. An affidavit or deposition to be used in this state.

13 **Comment.** Section 179 is amended to reflect the elimination of the justice court. Cal. Const.
14 art. VI, §§ 1, 5(b).

15 **Code Civ. Proc. § 194 (technical amendment). Definitions**

16 SEC. _____. Section 194 of the Code of Civil Procedure is amended to read:

17 194. The following definitions govern the construction of this chapter:

18 (a) “County” means any county or any coterminous city and county.

19 (b) “Court” means the superior, ~~municipal, and justice~~ and municipal courts of
20 this state, and includes, when the context requires, any judge of the court.

21 (c) “Deferred jurors” are those prospective jurors whose request to reschedule
22 their service to a more convenient time is granted by the jury commissioner.

23 (d) “Excused jurors” are those prospective jurors who are excused from service
24 by the jury commissioner for valid reasons based on statute, state or local court
25 rules, and policies.

26 (e) “Juror pool” means the group of prospective qualified jurors appearing for
27 assignment to trial jury panels.

28 (f) “Jury of inquest” is a body of persons summoned from the citizens before the
29 sheriff, coroner, or other ministerial officers, to inquire of particular facts.

30 (g) “Master list” means a list of names randomly selected from the source lists.

31 (h) “Potential juror” means any person whose name appears on a source list.

32 (i) “Prospective juror” means a juror whose name appears on the master list.

33 (j) “Qualified juror” means a person who meets the statutory qualifications for
34 jury service.

35 (k) “Qualified juror list” means a list of qualified jurors.

36 (l) “Random” means that which occurs by mere chance indicating an unplanned
37 sequence of selection where each juror’s name has substantially equal probability
38 of being selected.

39 (m) “Source list” means a list used as a source of potential jurors.

40 (n) “Summons list” means a list of prospective or qualified jurors who are
41 summoned to appear or to be available for jury service.

1 (o) “Trial jurors” are those jurors sworn to try and determine by verdict a
2 question of fact.

3 (p) “Trial jury” means a body of persons selected from the citizens of the area
4 served by the court and sworn to try and determine by verdict a question of fact.

5 (q) “Trial jury panel” means a group of prospective jurors assigned to a
6 courtroom for the purpose of voir dire.

7 **Comment.** Section 194(b) is amended to reflect the elimination of the justice court. Cal. Const.
8 art. VI, §§ 1, 5(b).

9 **Code Civ. Proc. § 195 (technical amendment). Jury commissioners**

10 SEC. _____. Section 195 of the Code of Civil Procedure is amended to read:

11 195. (a) In each county, there shall be one jury commissioner who shall be
12 appointed by, and serve at the pleasure of, a majority of the judges of the superior
13 court. In any county where there is a superior court administrator or executive
14 officer, that person shall serve as ex officio jury commissioner. The person so
15 appointed shall serve as jury commissioner for all trial courts within the county. In
16 any municipal ~~or justice~~ court district in the county, a majority of the judges may
17 appoint the clerk/administrator to select jurors for their court pursuant to this
18 chapter. In any court jurisdiction where any person other than a court administrator
19 or clerk/administrator is serving as jury commissioner on the effective date of this
20 section, that person shall continue to so serve at the pleasure of a majority or the
21 judges of the appointing court.

22 (b) Except where the superior court administrator or executive officer serves as
23 ex officio jury commissioner, the jury commissioner’s salary shall be set by joint
24 action of the board of supervisors and a majority of the superior court judges. Any
25 jury commissioner may, whenever the business of court requires, and with consent
26 of the board of supervisors, appoint deputy jury commissioners. Salaries and
27 benefits of such deputies shall be fixed in the same manner as salaries and benefits
28 of other court employees.

29 (c) The jury commissioner shall be primarily responsible for managing the jury
30 system under the general supervision of the court in conformance with the purpose
31 and scope of this act. He or she shall have authority to establish policies and
32 procedures necessary to fulfill this responsibility.

33 **Comment.** Section 195 is amended to reflect the elimination of the justice court. Cal. Const.
34 art. VI, §§ 1, 5(b).
35

☞ **Staff Note.** The last sentence of subdivision (a) may be obsolete. The Judicial Council may be able to clarify this point.

36 **Code Civ. Proc. § 215 (technical amendment). Fees and mileage for jurors**

37 SEC. _____. Section 215 of the Code of Civil Procedure is amended to read:

38 215. Unless a higher fee is provided for each day’s attendance by county or city
39 and county ordinance, the fee for jurors in the superior, ~~municipal, and justice~~ and
40 municipal courts, in civil and criminal cases, is five dollars (\$5) a day for each

1 day's attendance as a juror. Unless a higher rate of mileage is otherwise provided
2 by statute or by county or city and county ordinance, jurors in the superior,
3 ~~municipal, and justice~~ and municipal courts shall be reimbursed for mileage at the
4 rate of fifteen cents (\$0.15) per mile for each mile actually traveled in attending
5 court as a juror, in going only.

6 (b) In criminal cases, the board of supervisors of each county shall make
7 sufficient appropriations for the payment of the fees provided for in this section.

8 **Comment.** Section 215 is amended to reflect the elimination of the justice court. Cal. Const.
9 art. VI, §§ 1, 5(b).

10 **Code Civ. Proc. § 217 (technical amendment). Jurors in criminal cases**

11 SEC. _____. Section 217 of the Code of Civil Procedure is amended to read:

12 217. In criminal cases only, while the jury is kept together, either during the
13 progress of the trial or after their retirement for deliberation, the court may direct
14 the sheriff or marshal to provide the jury with suitable and sufficient food and
15 lodging, or other reasonable necessities. In the superior, ~~municipal, and justice~~ and
16 municipal courts, the expenses incurred under the provisions of this section shall
17 be charged against the county or city and county in which the court is held. All
18 those expenses shall be paid on the order of the court.

19 **Comment.** Section 217 is amended to reflect the elimination of the justice court. Cal. Const.
20 art. VI, §§1, 5(b).

21 **Code Civ. Proc. § 234 (technical amendment). Alternate jurors**

22 SEC. _____. Section 234 of the Code of Civil Procedure is amended to read:

23 234. Whenever, in the opinion of a judge of a superior, ~~municipal, or justice~~ or
24 municipal court about to try a civil or criminal action or proceeding, the trial is
25 likely to be a protracted one, or upon stipulation of the parties, the court may cause
26 an entry to that effect to be made in the minutes of the court and thereupon,
27 immediately after the jury is impaneled and sworn, the court may direct the calling
28 of one or more additional jurors, in its discretion, to be known as "alternate
29 jurors."

30 These alternate jurors shall be drawn from the same source, and in the same
31 manner, and have the same qualifications, as the jurors already sworn, and shall be
32 subject to the same examination and challenges. However, each side, or each
33 defendant, as provided in Section 231, shall be entitled to as many peremptory
34 challenges to the alternate jurors as there are alternate jurors called.

35 The alternate jurors shall be seated so as to have equal power and facilities for
36 seeing and hearing the proceedings in the case, and shall take the same oath as the
37 jurors already selected, and shall, unless excused by the court, attend at all times
38 upon the trial of the cause in company with the other jurors, but shall not
39 participate in deliberation unless ordered by the court, and for a failure to do so are
40 liable to be punished for contempt.

41 They shall obey the orders of and be bound by the admonition of the court, upon
42 each adjournment of the court; but if the regular jurors are ordered to be kept in the

1 custody of the sheriff or marshal during the trial of the cause, the alternate jurors
2 shall also be kept in confinement with the other jurors; and upon final submission
3 of the case to the jury, the alternate jurors shall be kept in the custody of the sheriff
4 or marshal who shall not suffer any communication to be made to them except by
5 order of the court, and shall not be discharged until the original jurors are
6 discharged, except as provided in this section.

7 If at any time, whether before or after the final submission of the case to the jury,
8 a juror dies or becomes ill, or upon other good cause shown to the court is found to
9 be unable to perform his or her duty, or if a juror requests a discharge and good
10 cause appears therefor, the court may order the juror to be discharged and draw the
11 name of an alternate, who shall then take his or her place in the jury box, and be
12 subject to the same rules and regulations as though he or she has been selected as
13 one of the original jurors.

14 All laws relative to fees, expenses, and mileage or transportation of jurors shall
15 be applicable to alternate jurors, except that in civil cases the sums for fees and
16 mileage or transportation need not be deposited until the judge directs alternate
17 jurors to be impaneled.

18 **Comment.** Section 234 is amended to reflect the elimination of the justice court. Cal. Const.
19 art. VI, §§ 1, 5(b).

20 **Code Civ. Proc. § 274c (technical amendment). Official reporters of municipal courts**

21 SEC. _____. Section 274c of the Code of Civil Procedure is amended to read:

22 274c. Official reporters of a municipal ~~or justice~~ court, or any one of them, must,
23 at the request of either party or of the court in a civil proceeding, or on the order of
24 the court in a criminal action or proceeding, take down in shorthand all the
25 testimony, the objections made, the rulings of the court, the exceptions taken, all
26 arraignments, pleas and sentences of defendants in criminal cases, the arguments
27 of the prosecuting attorney to the jury, and all statements and remarks made and
28 oral instructions given by the judge; and if directed by the court, or requested by
29 either party, must, within such reasonable time after the trial of such case as the
30 court may designate, write out the same, or such specific portions thereof as may
31 be requested, in plain and legible longhand, or by typewriter, or other printing
32 machine, and certify to the same as being correctly reported and transcribed, and
33 when directed by the court, file the same with the clerk of the court.

34 **Comment.** Section 274c is amended to reflect the elimination of the justice court. Cal. Const.
35 art. VI, §§ 1, 5(b).

36  **Staff Note.** Professor Kelso urges the Commission to defer consideration of this section, because the Judicial Council's SCA 4 committee is seeking information about how to handle the Code of Civil Procedure sections governing court reporters.

37 **Code Civ. Proc. § 392 (technical amendment). Real property actions**

38 SEC. _____. Section 392 of the Code of Civil Procedure is amended to read:

1 392. (1) Subject to the power of the court to transfer actions and proceedings as
2 provided in this title, the county in which the real property, which is the subject of
3 the action, or some part thereof, is situated, is the proper county for the trial of the
4 following actions:

5 (a) For the recovery of real property, or of an estate or interest therein, or for the
6 determination in any form, of such right or interest, and for injuries to real
7 property;

8 (b) For the foreclosure of all liens and mortgages on real property.

9 (2) The proper court for the trial of any such action, in the county hereinabove
10 designated as the proper county, shall be determined as follows: If there is a
11 municipal ~~or justice~~ court having jurisdiction of the subject matter of the action,
12 established in the city and county or judicial district in which the real property
13 which is the subject of the action, or some part thereof, is situated, such court is
14 the proper court for the trial of such action; otherwise any court in such county
15 having jurisdiction of the subject matter of the action, is a proper court for the trial
16 thereof.

17 **Comment.** Section 392 is amended to reflect the elimination of the justice court. Cal. Const.
18 art. VI, §§ 1, 5(b). Section 392 is also amended to make other technical changes.

19 **Code Civ. Proc. § 393 (technical amendment). Action for penalty or forfeiture or against**
20 **public officer**

21 SEC. _____. Section 393 of the Code of Civil Procedure is amended to read:

22 393. (1) Subject to the power of the court to transfer actions and proceedings as
23 provided in this title, the county in which the cause, or some part thereof, arose, is
24 the proper county for the trial of the following actions:

25 (a) For the recovery of a penalty or forfeiture imposed by statute; except, that
26 when it is imposed for an offense committed on a lake, river, or other stream of
27 water, situated in two or more counties, the action may be tried in any county
28 bordering on such lake, river, or stream, and opposite to the place where the
29 offense was committed;

30 (b) Against a public officer or person especially appointed to execute ~~his duties~~
31 the duties of a public officer, for an act done by ~~him that person~~ in virtue of ~~his~~ the
32 office; or against a person who, by ~~his~~ command or in ~~his~~ aid, does anything
33 touching the duties of ~~such a~~ public officer.

34 (2) The proper court for the trial of any such action, in the county hereinabove
35 designated as the proper county, shall be determined as follows: If there is a
36 municipal ~~or justice~~ court, having jurisdiction of the subject matter of the action,
37 established in the city and county or judicial district in which the cause, or some
38 part thereof, arose, such court is the proper court for the trial of such action;
39 otherwise, any court in such county, having jurisdiction of the subject matter of the
40 action, is a proper court for the trial thereof. In the case of offenses committed on a
41 lake, river, or stream, hereinabove mentioned, the court, having jurisdiction of the
42 subject matter of the action, nearest to the place where such offense was

1 committed, in any county mentioned in subdivision 1 of this section, is a proper
2 court for the trial of the action.

3 **Comment.** Section 393 is amended to reflect the elimination of the justice court. Cal. Const.
4 art. VI, § 5(b). Section 393 is also amended to make other technical changes.

5 **Code Civ. Proc. § 395 (amended). Actions generally**

6 SEC. _____. Section 395 of the Code of Civil Procedure is amended to read:

7 395. (a) Except as otherwise provided by law and subject to the power of the
8 court to transfer actions or proceedings as provided in this title, the county in
9 which the defendants or some of them reside at the commencement of the action is
10 the proper county for the trial of the action. If the action is for injury to person or
11 personal property or for death from wrongful act or negligence, either the county
12 where the injury occurs or the injury causing death occurs or the county in which
13 the defendants, or some of them reside at the commencement of the action, shall
14 be a proper county for the trial of the action. In a proceeding for dissolution of
15 marriage, the county in which either the petitioner or respondent has been a
16 resident for three months next preceding the commencement of the proceeding is
17 the proper county for the trial of the proceeding. In a proceeding for nullity of
18 marriage or legal separation of the parties, the county in which either the petitioner
19 or the respondent resides at the commencement of the proceeding is the proper
20 county for the trial of the proceeding. In a proceeding to enforce an obligation of
21 support under Section 3900 of the Family Code, the county in which the child
22 resides is the proper county for the trial of the action. In a proceeding to establish
23 and enforce a foreign judgment or court order for the support of a minor child, the
24 county in which the child resides is the proper county for the trial of the action.
25 Subject to subdivision (b), when a defendant has contracted to perform an
26 obligation in a particular county, either the county where the obligation is to be
27 performed or in which the contract in fact was entered into or the county in which
28 the defendant or any such defendant resides at the commencement of the action
29 shall be a proper county for the trial of an action founded on that obligation, and
30 the county in which the obligation is incurred shall be deemed to be the county in
31 which it is to be performed unless there is a special contract in writing to the
32 contrary. If none of the defendants reside in the state or if residing in the state and
33 the county in which they reside is unknown to the plaintiff, the action may be tried
34 in any county which the plaintiff may designate in his or her complaint, and, if the
35 defendant is about to depart from the state, the action may be tried in any county
36 where either of the parties reside or service is made. If any person is improperly
37 joined as a defendant or has been made a defendant solely for the purpose of
38 having the action tried in the county or judicial district where he or she resides, his
39 or her residence shall not be considered in determining the proper place for the
40 trial of the action.

41 (b) Subject to the power of the court to transfer actions or proceedings as
42 provided in this title, in an action arising from an offer or provision of goods,

1 services, loans or extensions of credit intended primarily for personal, family or
2 household use, other than an obligation described in Section 1812.10 or Section
3 2984.4 of the Civil Code, or an action arising from a transaction consummated as a
4 proximate result of an unsolicited telephone call made by a seller engaged in the
5 business of consummating transactions of that kind, the county in which the buyer
6 or lessee in fact signed the contract, the county in which the buyer or lessee
7 resided at the time the contract was entered into, or the county in which the buyer
8 or lessee resides at the commencement of the action is the proper county for the
9 trial thereof.

10 (c) If within the county there is a municipal ~~or justice~~ court having jurisdiction of
11 the subject matter established, in the cases mentioned in subdivision (a), in the
12 judicial district in which the defendant or any defendant resides, in which the
13 injury to person or personal property or the injury causing death occurs, or, in
14 which the obligation was contracted to be performed or, in cases mentioned in
15 subdivision (b), in the judicial district which the buyer or lessee resides, in which
16 the buyer or lessee in fact signed the contract, in which the buyer or lessee resided
17 at the time the contract was entered into, or in which the buyer or lessee resides at
18 the commencement of the action, then that court is the proper court for the trial of
19 the action. Otherwise, any municipal ~~or justice~~ court in the county having
20 jurisdiction of the subject matter is a proper court for the trial thereof.

21 (d) Any provision of an obligation described in subdivision (b) or (c) waiving
22 those subdivisions is void and unenforceable.

23 **Comment.** Section 395 is amended to reflect the elimination of the justice court. Cal. Const.
24 art. VI, §§ 1, 5(b).

25 **Code Civ. Proc. § 396 (technical amendment). Court without jurisdiction**

26 SEC. _____. Section 396 of the Code of Civil Procedure is amended to read:

27 396. If an action or proceeding is commenced in a court which lacks jurisdiction
28 of the subject matter thereof, as determined by the complaint or petition, if there is
29 a court of this state which has such jurisdiction, the action or proceeding shall not
30 be dismissed (except as provided in Section 399, and subdivision 1 of Section 581)
31 but shall, on the application of either party, or on the court's own motion, be
32 transferred to a court having jurisdiction of the subject matter which may be
33 agreed upon by the parties, or, if they do not agree, to a court having such
34 jurisdiction which is designated by law as a proper court for the trial or
35 determination thereof, and it shall thereupon be entered and prosecuted in the court
36 to which it is transferred as if it had been commenced therein, all prior proceedings
37 being saved. In any such case, if summons is served prior to the filing of the action
38 or proceeding in the court to which it is transferred, as to any defendant, so served,
39 who has not appeared in the action or proceeding, the time to answer or otherwise
40 plead shall date from service upon such defendant of written notice of filing of
41 such action or proceeding in the court to which it is transferred.

1 If an action or proceeding is commenced in or transferred to a court which has
2 jurisdiction of the subject matter thereof as determined by the complaint or
3 petition, and it thereafter appears from the verified pleadings, or at the trial, or
4 hearing, that the determination of the action or proceeding, or of a cross-
5 complaint, will necessarily involve the determination of questions not within the
6 jurisdiction of the court, in which the action or proceeding is pending, the court,
7 whenever such lack of jurisdiction appears, must suspend all further proceedings
8 therein and transfer the action or proceeding and certify the pleadings (or if the
9 pleadings be oral, a transcript of the same), and all papers and proceedings therein
10 to a court having jurisdiction thereof which may be agreed upon by the parties, or,
11 if they do not agree, to a court having such jurisdiction which is designated by law
12 as a proper court for the trial or determination thereof.

13 An action or proceeding which is transferred under the provisions of this section
14 shall be deemed to have been commenced at the time the complaint or petition was
15 filed in the court from which it was originally transferred.

16 Nothing herein shall be construed to preclude or affect the right to amend the
17 pleadings as provided in this code.

18 Nothing herein shall be construed to require the superior court to transfer any
19 action or proceeding because the judgment to be rendered, as determined at the
20 trial or hearing, is one which might have been rendered by a municipal ~~or justice~~
21 court in the same county or city and county.

22 In any case where the lack of jurisdiction is due solely to an excess in the
23 amount of the demand, the excess may be remitted and the action may continue in
24 the court where it is pending.

25 Upon the making of an order for such transfer, proceedings shall be had as
26 provided in Section 399 of this code, the costs and fees thereof, and of filing the
27 case in the court to which transferred, to be paid by the party filing the pleading in
28 which the question outside the jurisdiction of the court appears unless the court
29 ordering the transfer shall otherwise direct.

30 **Comment.** Section 396 is amended to reflect the elimination of the justice court. Cal. Const.
31 art. VI, §§ 1, 5(b).

32 **Code Civ. Proc. § 402 (technical amendment). Transfer for convenience of municipal court**

33 SEC. _____. Section 402 of the Code of Civil Procedure is amended to read:

34 402. The presiding judge of a municipal ~~or justice~~ court district, may order, for
35 the convenience of the court, that any case pending trial be transferred to a
36 contiguous municipal ~~or justice~~ court district in the same county if the presiding
37 judge in the district to which the case is proposed to be transferred consents to the
38 transfer and notice thereof is given to the parties or their attorneys at least 10 days
39 in advance of the date fixed for trial.

40 No fees shall be charged for the transfer of any case pursuant to this section.

41 **Comment.** Section 402 is amended to reflect the elimination of the justice court. Cal. Const.
42 art. VI, §§ 1, 5(b).

1 **Code Civ. Proc. § 422.20 (repealed). Justice court pleadings**

2 SEC. _____. Section 422.20 of the Code of Civil Procedure is repealed.

3 ~~422.20. The rules of pleading in justice courts shall be the same as the rules of~~
4 ~~pleading in municipal courts.~~

5 **Comment.** Section 422.20 is repealed to reflect the elimination of the justice court. Cal. Const.
6 art. VI, §§ 1, 5(b).

7 **Code Civ. Proc. § 422.30 (technical amendment). Caption**

8 SEC. _____. Section 422.30 of the Code of Civil Procedure is amended to read:

9 422.30. Every pleading shall contain a caption setting forth:

10 (a) The name of the court and county, and, in municipal ~~and justice~~ courts, the
11 name of the judicial district, in which the action is brought; and

12 (b) The title of the action.

13 **Comment.** Section 422.30 is amended to reflect the elimination of the justice court. Cal. Const.
14 art. VI, §§ 1, 5(b).

15 **Code Civ. Proc. § 575 (technical amendment). Promulgation of rules by Judicial Council**

16 SEC. _____. Section 575 of the Code of Civil Procedure is amended to read:

17 575. The Judicial Council may promulgate rules governing pretrial conferences,
18 and the time, manner and nature thereof, in civil cases at issue, or in one or more
19 classes thereof, in the ~~superior, municipal, and justice~~ municipal and superior
20 courts.

21 **Comment.** Section 575 is amended to reflect the elimination of the justice court. Cal. Const.
22 art. VI, §§ 1, 5(b).

23 **Code Civ. Proc. § 575.1 (technical amendment). Local rules**

24 SEC. _____. Section 575.1 of the Code of Civil Procedure is amended to read:

25 575.1. (a) The presiding judge of each ~~superior, municipal, and justice~~ municipal
26 or superior court may prepare, with the assistance of appropriate committees of the
27 court, proposed local rules designed to expedite and facilitate the business of the
28 court. The rules need not be limited to those actions on the civil active list, but
29 may provide for the supervision and judicial management of actions from the date
30 they are filed. Rules prepared pursuant to this section shall be submitted for
31 consideration to the judges of the court and, upon approval by a majority of the
32 judges, the judges shall have the proposed rules published and submitted to the
33 local bar and others, as specified by the Judicial Council, for consideration and
34 recommendations.

35 (b) After a majority of the judges have officially adopted the rules, 61 copies or a
36 greater number as specified by Judicial Council rule, shall be filed with the
37 Judicial Council as required by Section 68071 of the Government Code. The
38 Judicial Council shall deposit a copy of each rule and amendment with each
39 county law library or county clerk where it shall be made available for public
40 examination. The local rules shall also be published for general distribution in
41 accordance with rules adopted by the Judicial Council. Each court shall make its

1 local rules available for inspection and copying in every location of the court that
2 generally accepts filing of papers. The court may impose a reasonable charge for
3 copying the rules and may impose a reasonable page limit on copying. The rules
4 shall be accompanied by a notice indicating where a full set of the rules may be
5 purchased.

6 (c) If a judge of a court adopts a rule which applies solely to cases in that judge's
7 courtroom, or a particular branch or district of a court adopts a rule that applies
8 solely to cases in that particular branch or district of a court, the court shall publish
9 these rules as part of the general publication of rules required by the California
10 Rules of Court. The court shall organize the rules so that rules on a common
11 subject, whether individual, branch, district, or courtwide appear sequentially.
12 Individual judges' rules and branch and district rules are local rules of court for
13 purposes of this section and for purposes of the adoption, publication, comment,
14 and filing requirements set forth in the Judicial Council rules applicable to local
15 court rules.

16 **Comment.** Section 575.1 is amended to reflect the elimination of the justice court. Cal. Const.
17 art. VI, §§ 1, 5(b).

18 **Code Civ. Proc. § 581d (technical amendment). Dismissal**

19 SEC. _____. Section 581d of the Code of Civil Procedure is amended to read:

20 581d. A written dismissal of an action shall be entered in the clerk's register and
21 is effective for all purposes when so entered. All dismissals ordered by the court
22 shall be in the form of a written order signed by the court and filed in the action
23 and such orders when so filed shall constitute judgments and be effective for all
24 purposes, and the clerk ~~in superior, municipal, and justice courts~~ shall note such
25 judgments in ~~his~~ the register of actions in the case.

26 **Comment.** Section 581d is amended to reflect the elimination of the justice court. Cal. Const.
27 art. VI, §§ 1, 5(b). Section 581d is also amended to make another technical change.

28 **Code Civ. Proc. § 594 (technical amendment). Bringing issues to trial or hearing**

29 SEC. _____. Section 594 of the Code of Civil Procedure is amended to read:

30 594. (a) In ~~superior, municipal, and justice~~ superior and municipal courts, either
31 party may bring an issue to trial or to a hearing, and, in the absence of the adverse
32 party, unless the court, for good cause, otherwise directs, may proceed with ~~his~~ the
33 case and take a dismissal of the action, or a verdict, or judgment, as the case may
34 require; provided, however, if the issue to be tried is an issue of fact, proof shall
35 first be made to the satisfaction of the court that the adverse party has had 15 days'
36 notice of such trial or five days' notice of such trial in an unlawful detainer action
37 as specified in subdivision (b). If the adverse party has served notice of trial upon
38 the party seeking the dismissal, verdict, or judgment at least five days prior to the
39 trial, the adverse party shall be deemed to have had such notice.

40 (b) The notice to the adverse party required by subdivision (a) shall be served by
41 mail on all the parties by the clerk of the court not less than 20 days prior to the
42 date set for trial. In an unlawful detainer action where notice is served by mail

1 such service shall be mailed not less than 10 days prior to the date set for trial. If
2 notice is not served by the clerk as required by this subdivision, it may be served
3 by mail by any party on the adverse party not less than 15 days prior to the date set
4 for trial, and in an unlawful detainer action where notice is served by mail such
5 service shall be mailed not less than 10 days prior to the date set for trial. The time
6 provisions of Section 1013 shall not serve to extend the notice of trial
7 requirements under this subdivision for unlawful detainer actions. If notice is
8 served by the clerk, proof thereof may be made by introduction into evidence of
9 the clerk's certificate pursuant to subdivision (3) of Section 1013a or other
10 competent evidence. If notice is served by a party, proof may be made by
11 introduction into evidence of an affidavit or certificate pursuant to subdivision (1)
12 or (2) of Section 1013a or other competent evidence. The provisions of this
13 subdivision are exclusive.

14 **Comment.** Section 594 is amended to reflect the elimination of the justice court. Cal. Const.
15 art. VI, §§ 1, 5(b). Section 594 is also amended to make another technical change.

16 **Code Civ. Proc. § 628 (technical amendment). Entry upon receipt of verdict**

17 SEC. _____. Section 628 of the Code of Civil Procedure is amended to read:

18 628. In ~~superior, municipal, and justice~~ superior and municipal courts, upon
19 receipt of a verdict, an entry must be made in the minutes of the court, specifying
20 the time of trial, the names of the jurors and witnesses, and setting out the verdict
21 at length; and where special verdict is found, either the judgment rendered thereon,
22 or if the case be reserved for argument or further consideration, the order thus
23 reserving it.

24 **Comment.** Section 628 is amended to reflect the elimination of the justice court. Cal. Const.
25 art. VI, §§ 1, 5(b).

26 **Code Civ. Proc. § 632 (technical amendment). Statement of decision**

27 SEC. _____. Section 632 of the Code of Civil Procedure is amended to read:

28 632. In ~~superior, municipal, and justice~~ superior and municipal courts, upon the
29 trial of a question of fact by the court, written findings of fact and conclusions of
30 law shall not be required. The court shall issue a statement of decision explaining
31 the factual and legal basis for its decision as to each of the principal controverted
32 issues at trial upon the request of any party appearing at the trial. The request must
33 be made within 10 days after the court announces a tentative decision unless the
34 trial is concluded within one calendar day or in less than eight hours over more
35 than one day in which event the request must be made prior to the submission of
36 the matter for decision. The request for a statement of decision shall specify those
37 controverted issues as to which the party is requesting a statement of decision.
38 After a party has requested such a statement, any party may make proposals as to
39 the content of the statement of decision.

40 The statement of decision shall be in writing, unless the parties appearing at trial
41 agree otherwise; however, when the trial is concluded within one calendar day or

1 in less than 8 hours over more than one day, the statement of decision may be
2 made orally on the record in the presence of the parties.

3 **Comment.** Section 632 is amended to reflect the elimination of the justice court. Cal. Const.
4 art. VI, §§ 1, 5(b).

5 **Code Civ. Proc. § 655 (technical amendment). Application of article to municipal and**
6 **superior courts**

7 SEC. _____. Section 655 of the Code of Civil Procedure is amended to read:
8 655. The provisions of this article apply to ~~superior, municipal, or justice courts~~
9 municipal and superior courts.

10 **Comment.** Section 655 is amended to reflect the elimination of the justice court. Cal. Const.
11 art. VI, §§ 1, 5(b).

12 **Code Civ. Proc. § 668 (technical amendment). Judgment book**

13 SEC. _____. Section 668 of the Code of Civil Procedure is amended to read:
14 668. Except as provided in Section 668.5, the clerk of ~~the superior, municipal,~~
15 ~~and justice court~~ a superior or municipal court, must keep, with the records of the
16 court, a book called the “judgment book,” in which judgments must be entered.

17 **Comment.** Section 668 is amended to reflect the elimination of the justice court. Cal. Const.
18 art. VI, §§ 1, 5(b).

19 **Code Civ. Proc. § 670 (technical amendment). Judgment roll**

20 SEC. _____. Section 670 of the Code of Civil Procedure is amended to read:
21 670. In ~~superior, municipal, and justice~~ superior and municipal courts, the
22 following papers, without being attached together, shall constitute the judgment
23 roll:

24 (a) In case the complaint is not answered by any defendant, the summons, with
25 the affidavit or proof of service; the complaint; the request for entry of default with
26 a memorandum indorsed thereon that the default of the defendant in not answering
27 was entered, and a copy of the judgment; if defendant has appeared by demurrer,
28 and the demurrer has been overruled, then notice of the overruling thereof served
29 on defendant’s attorney, together with proof of the service; and in case the service
30 so made is by publication, the affidavit for publication of summons, and the order
31 directing the publication of summons.

32 (b) In all other cases, the pleadings, all orders striking out any pleading in whole
33 or in part, a copy of the verdict of the jury, the statement of decision of the court,
34 or finding of the referee, and a copy of any order made on demurrer, or relating to
35 a change of parties, and a copy of the judgment; if there are two or more
36 defendants in the action, and any one of them has allowed judgment to pass
37 against him or her by default, the summons, with proof of its service, on the
38 defendant, and if the service on the defaulting defendant be by publication, then
39 the affidavit for publication, and the order directing the publication of the
40 summons.

1 **Comment.** Section 670 is amended to reflect the elimination of the justice court. Cal. Const.
2 art. VI, §§ 1, 5(b).

3 **Code Civ. Proc. § 688.010 (amended). Jurisdiction**

4 SEC. _____. Section 688.010 of the Code of Civil Procedure is amended to read:
5 688.010. For the purpose of the remedies provided under this article, jurisdiction
6 is conferred upon any of the following courts:

7 (a) The superior court, regardless whether the municipal ~~or justice~~ court also has
8 jurisdiction under subdivision (b).

9 (b) The municipal ~~or justice~~ court if (1) the amount of liability sought to be
10 collected does not exceed the jurisdictional amount of the court and (2) the legality
11 of the liability being enforced is not contested by the person against whom
12 enforcement is sought.

13 **Comment.** Section 688.010 is amended to reflect the elimination of the justice court. Cal.
14 Const. art. VI, §§ 1, 5(b).

15  **Staff Note.** Professor Kelso has pointed out that Section 688.010 may be unconstitutional
16 because it appears to create concurrent jurisdiction in the superior and municipal courts for
17 purposes of enforcing the “remedies provided under this article,” which relates to the
18 enforcement of state tax liabilities. Arguably, concurrent jurisdiction should not be possible
19 since the Constitution vests original jurisdiction in the superior court “in all causes except those
20 given by statute to other trial courts.” The staff is researching this point. It may be appropriate
21 for the Commission’s list of potential study topics.

22 **Code Civ. Proc. § 912 (amended). Certification to trial court of result on appeal**

23 SEC. _____. Section 912 of the Code of Civil Procedure is amended to read:
24 912. Upon final determination of an appeal by the reviewing court, the clerk of
25 the court shall remit to the trial court a certified copy of the judgment or order of
26 the reviewing court and of its opinion, if any. The clerk of the trial court ~~, or the~~
27 ~~judge, if there be no clerk, shall file such~~ shall file the certified copy of the
28 judgment and opinion of the reviewing court, shall attach the same to the judgment
29 roll if the appeal was from a judgment, and shall enter a note of the judgment of
30 the reviewing court stating whether the judgment or order appealed from has been
31 affirmed, reversed or modified, in the margin of the original entry of such
32 judgment or order, and also in the register of actions or docket.

33 **Comment.** Section 912 is amended to reflect the elimination of the justice court. Cal. Const.
34 art. VI, §§ 1, 5(b), (e), 10.

35 The amendment deletes the clause authorizing the judge to substitute for the clerk if there be no
36 clerk. That provision is obsolete because every municipal and superior court has a clerk.
37 Additionally, judges have authority to perform any act that court clerks are allowed to perform.
38 Section 167.

39 In a county in which there in no municipal court, a matter appealed to the appellate division of
40 the superior court is reviewed in the same court as it is tried. Thus, the clerk of the superior court
41 may file the documents referenced in Section 912 directly, rather than via certified copy.

42 **Code Civ. Proc. § 1052 (technical amendment). Register of civil actions in municipal court**

43 SEC. _____. Section 1052 of the Code of Civil Procedure is amended to read:

1 1052. The clerk of a municipal ~~or justice~~ court may keep among the records of
2 the court a register of civil actions in which shall be entered the title of the action
3 commenced in that court, with brief notes under it, from time to time, of all papers
4 filed and proceedings had therein.

5 **Comment.** Section 1052 is amended to reflect the elimination of the justice court. Cal. Const.
6 art. VI, §§ 1, 5(b).

7 **Code Civ. Proc. § 1052.5 (technical amendment). Alternative methods of keeping register of**
8 **actions**

9 SEC. _____. Section 1052.5 of the Code of Civil Procedure is amended to read:

10 1052.5. In lieu of maintaining a register of actions as described in Section 1052,
11 the clerk of the municipal ~~or justice~~ court may maintain a register of actions by
12 means of photographing, microphotographing, or mechanically or electronically
13 storing the whole content of all papers and records, or any portion thereof, as will
14 constitute a memorandum, necessary to the keeping of a register of actions so long
15 as the completeness and chronological sequence of the register are not disturbed.

16 All such reproductions shall be placed in convenient, accessible files, and
17 provision shall be made for preserving, examining, and using them.

18 Any photograph, microphotograph, or photocopy which is made pursuant to this
19 section shall be made in such manner and on such paper as will comply with the
20 minimum standards of quality approved therefor by the National Bureau of
21 Standards.

22 **Comment.** Section 1052.5 is amended to reflect the elimination of the justice court. Cal. Const.
23 art. VI, §§ 1, 5(b).

24 **Code Civ. Proc. § 1060 (technical amendment). Declaration of rights and duties**

25 SEC. _____. Section 1060 of the Code of Civil Procedure is amended to read:

26 1060. Any person interested under a written instrument, excluding a will or a
27 trust, or under a contract, or who desires a declaration of his or her rights or duties
28 with respect to another, or in respect to, in, over or upon property, or with respect
29 to the location of the natural channel of a watercourse, may, in cases of actual
30 controversy relating to the legal rights and duties of the respective parties, bring an
31 original action or cross-complaint in the superior court or in the municipal ~~or~~
32 ~~justice~~ court to the extent allowed pursuant to Article 1 (commencing with Section
33 86) of Chapter 5 of Title 1 of Part 1 for a declaration of his or her rights and duties
34 in the premises, including a determination of any question of construction or
35 validity arising under the instrument or contract. He or she may ask for a
36 declaration of rights or duties, either alone or with other relief; and the court may
37 make a binding declaration of these rights or duties, whether or not further relief is
38 or could be claimed at the time. The declaration may be either affirmative or
39 negative in form and effect, and the declaration shall have the force of a final
40 judgment. The declaration may be had before there has been any breach of the
41 obligation in respect to which said declaration is sought.

1 **Comment.** Section 1060 is amended to reflect the elimination of the justice court. Cal. Const.
2 art. VI, §§ 1, 5(b).

3 **Code Civ. Proc. § 1141.12 (technical amendment). Arbitration**

4 SEC. _____. Section 1141.12 of the Code of Civil Procedure is amended to read:
5 1141.12. (a) In each superior court in which arbitration may be had pursuant to
6 subdivision (a) or (b) of Section 1141.11, upon stipulation of the parties, any at-
7 issue civil actions shall be submitted to arbitration regardless of the amount in
8 controversy.

9 (b) In all other superior, ~~municipal, and justice~~ and municipal courts, the Judicial
10 Council shall provide by rule for a uniform system of arbitration of the following
11 causes:

- 12 (i) Any cause upon stipulation of the parties, and
13 (ii) Upon filing of an election by the plaintiff, any cause in which the plaintiff
14 agrees that the arbitration award shall not exceed the amount in controversy as
15 specified in Section 1141.11.

16 (c) Any election by a plaintiff shall be filed no sooner than the filing of the at-
17 issue memorandum, and no later than 90 days before trial, or at a later time if
18 permitted by the court.

19 **Comment.** Section 1141.12 is amended to reflect the elimination of the justice court. Cal.
20 Const. art. VI, §§ 1, 5(b).

21 **Code Civ. Proc. § 1775.1 (technical amendment). Definitions**

22 SEC. _____. Section 1775.1 of the Code of Civil Procedure is amended to read:

23 1775.1. (a) As used in this title:
24 (1) “Court” means a superior ~~court, municipal court, or justice court.~~ or
25 municipal court.

26 (2) “Mediation” means a process in which a neutral person or persons facilitate
27 communication between the disputants to assist them in reaching a mutually
28 acceptable agreement.

29 (b) Unless otherwise specified in this title or ordered by the court, any act to be
30 performed by a party may also be performed by his or her counsel of record.

31 **Comment.** Section 1775.1 is amended to reflect the elimination of the justice court. Cal. Const.
32 art. VI, §§ 1, 5(b).

33 **Code Civ. Proc. § 2015.3 (technical amendment). Certificate of sheriff, marshal, or court**
34 **clerk**

35 SEC. _____. Section 2015.3 of the Code of Civil Procedure is amended to read:
36 2015.3. The certificate of a sheriff, marshal, or the clerk of the ~~superior,~~
37 ~~municipal, or justice~~ superior or municipal court, has the same force and effect as
38 his or her affidavit.

39 **Comment.** Section 2015.3 is amended to reflect the elimination of the justice court. Cal. Const.
40 art. VI, §§ 1, 5(b).